Law Review
OF KYIV UNIVERSITY OF LAW

Ukrainian scientific and theoretical periodical

Founded in October, 2001

2014/3

Published 4 times per year

Kyiv University of Law of the NAS of Ukraine
V.M.Koretskyi Institute of State and Law of the NAS of Ukraine

Recommended for publishing by Kyiv University of Law of the NAS of Ukraine Academic Council (protocol № 2, 30.10.2014) and by V.M.Koretskyi Institute of State and Law of the NAS of Ukraine Academic Council (protocol № 8, 16.10.2014)

Subscription index 23994

ISSN 2219-5521

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The Chasopys of Kyiv University of Law (Law Review of Kyiv University of Law) was entered on the international scientometric data base HeinOnline by the license Agreement of 10.10.14

"Law Review of Kyiv University of Law" is included into the professional publication list "Legal sciences" (by the Highest Certification Committee of Ukraine resolution № 1-05/6, 12.06.02; by the Highest Certification Committee of Ukraine resolution № 1-05/3, 14.04.10).

The editorial office address: 4, Triokhsviatytelska Street, Kyiv, 01601.
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The editor *T.Khodakivska*. The artist *N.Kosyak*.
Computer premastering: *G.Kondrashyn*

Printed media state register certificate KV № 16356-4828 PR, 19.02.2010
Signed for printing 03.09.2014. Format 60×84 $^{1}/_{8}$.
Offset printing. Conventional printed sheets 37,4. Published sheets 42,6. Sheet feed 500 copies.
Edition and printing: Kyiv University of Law of the NAS of Ukraine. 4 Triokhsviatytelska St., 01601, Kyiv-1, phone-number (+38044) 278-73-11.

UDC 340.1; 342.01; 342.5

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CONCEPTUAL PROBLEMS OF THE CONSTITUTIONAL REGULATION OF THE STATUS OF TERRITORIAL HROMADAS IN UKRAINE

In the article the contest of the category "territorial hromada" is given. The features of legal subjection of territorial hromada as primary subject of municipal power in Ukraine are defined.

It is noted that the existing legal framework of local self-government in Ukraine and projects that have been implemented in the formation and development of territorial hromada were fragmented and focused only on solving some of the constitution of their status. Therefore, the immediate task is complex solution of the main problems of organization and functioning of local self-government in modern Ukraine – the creation of constitutional and legal conditions for the formation of territorial hromadas as primary subjects of local self-government, the main carrier of its functions and powers.

The process of formation the legislation about local self-government in Ukraine at the position of the principles of classical municipalism is analyzed. An author establishes that development of legislation about local self-government in the last few years is the negative example of the total walking away from fixed in Constitution of Ukraine of ideological bases of municipal democracy.

Make conclusion about strengthening in modern Ukraine of tendency of recentralization of local self-government institute. The local self-government actually develops despite constitutional principles in retrograde, toward thr centralization, narrowing of its autonomous from state power status. The arguments about the attempts of strengthening of state interference in the process of decision of the municipal character questions, to complete integration of local self-government in state-administrative public relations are brought.

The conceptual problems of the reform of local self-government and territorial organization of power in modern Ukraine is shown. Specified, that among many questions of constitutionally-legal modernization, the problem of municipal reform behaves to the number of priorities of public policy. One of major problems of municipal reform is a search of optimal doctrine basis of local self-government. Theoretical bases of modern municipalism substantially influence not only on becoming of native municipal science but also on municipal practice, coming forward the original integrating reference-point of legal ideology. Proved, that the modern constitutionally-project initiatives presented in the format of official doctrine vision of future model of local self-government testify that conceptual vision of course on forming of public model of local self-government, that is in basis of Constitution of Ukraine 1996, devalued actually.

Proposed authors' view the content of Article 140 of the Constitution of Ukraine to strengthen the status of the territorial hromadas. The results of research give opportunity to institute the territorial hromadas in Ukraine in accordance with internationally-legal standards in the sphere of local self-government.

Ivan Halasz, *Professor, Dr. Phd, Senior researcher of Institute of legal Sciences research Center of social Sciences of the Hungarian Academy of Sciences (Budapest), guest Professor of Socio-political Department of the Silesian University in Opava*

DEVELOPMENT OF THE HUNGARIAN JUDICIAL SYSTEM IN TRANSCARPATHIA FROM THE HUNGARIAN STATEHOOD BEGINNINGS TO 1867

The paper deals with the main periods of development of the judicial system in the Transcarpathia from the Hungarian statehood beginnings in XI century to the Austro-Hungarian Compromise in 1867. The study highlights the main principles and the mechanism of the functioning of the old Hungarian judiciary. The article addresses connected to the creation of the peculiarities of the judicial institutions, which were the basic state institutions. These institutions served as the basic elements of the self-government of the feudal society and different ethnical communities and regions inside the Kingdom of Hungary too. The article focuses on the territories, which are currently the part of Transcarpathia region.

In modern European understanding the basis of their state Hungarian historical consciousness and public law tradition associates with the name Istvan I of the dynasty of Arpad, who later was enrolled among the saints, and became known historical figure as Saint Istvan. The Foundation of the state, of course, was a process, which has its roots in the times of the arrival of Hungarians in Central Europe, i.e. to the time when the Hungarians found their homeland. For 200 years the Hungarian owners have managed to create quite authoritative state, whose borders were determined on the East and North of the Carpathian mountains, in the South - South-East European lowland, and on the West by the Adriatic sea. In public education, regardless of their ethnic origin, and those were all people who in those days was inhabited by the southern slopes of the Carpathians.

The current territory of Transcarpathia was a South-Eastern region of the Kingdom of Hungary with an ethnically very heterogeneous population. In addition, from the point of view of the Central authorities, this area was considered remote and impoverished region, which is in contrast to located in the South-Western part of the Autonomous state of Croatia-Slavonia, or not just from the subject with a special status, and is almost independent of Transylvania, did not have any special status, there was a fully integrated part of the state. Of course, this was manifested in the construction of the structure of public authorities and the judiciary in the region. The everyday practice of their activities also did not differ from nation-wide. Certain specificity was associated is with the already mentioned features of the periphery status and ethnicity.

UDC 34:165.242.1

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SELF-CONSCIOUSNESS AS A STRUCTURAL AND FUNCTIONAL CORE OF LEGAL SELF-KNOWLEDGE

In the article addresses issues development of self-consciousness of the individual in the field of law. Investigation of the nature, structure, functions and the genesis of self-consciousness is a necessary step towards the development of the author of the theoretical foundations, methodology and methods of legal self-knowledge.

The purpose of research is realized in the object contour of legal doctrine of legal consciousness. Actively employ foreign and Ukrainian scientists who work in the sector of general psychology. The interdisciplinary nature of the study of legal self-consciousness is due to the nature of the research subject.

According to the author, the concept of "legal self-consciousness" refers to the totality of psychic phenomena and processes that have the legal content (arise as a consequence of consciousness focus on the phenomena of legal reality) and belong to various structural components of the individual self-consciousness.

Particular attention is paid to the notion of Self-concept that emerged in the mid-twentieth century in the context of humanistic psychology. The author summarizes existing member scientific ideas about the nature, structure and funktsonalnyh manifestations of this phenomenon. In the context of these representations is interpreted content of the Self-concept of "legal person".

The article examines the role of self-consciousness and Self-concept in the organization and development of the human psyche, social interaction and self-regulation of human behavior. Legal self-consciousness is interpreted as mental education, which can be an effective regulator of legal behavior and factor the progressive development of legal consciousness and legal culture of the individual.

The mechanisms of social interaction form the context in which the formation of legal self-consciousness of the individual is considered. Social adaptation and internalization as phases of legal socialization of the individual are filled with content that meets the subject matter of this article.

The author substantiates the theoretical and practical feasibility of further studies of legal self-consciousness.

UDC 340.12

Volodymyr Desiatnyk, *Doctor of Science (Law), Professor of the Kyiv University of Law of the National Academy of Sciences of Ukraine, lawyer*

CRITICAL LEGAL THINKING

Natural law and positive legal ways of thinking are the main types of thinking based on the total opposite directions in the theory of knowledge, which is rationalism and empiricism; they are B. Rassel notes, there were close ever since the birth of Greek civilization, and every time it seemed that one of these areas is absolutely dominant, is led by reacting in response to a new outbreak opposite. In terms of rationalism true philosopher must be able to "catch" those rare ideas that attract the mind the transparency, clarity and precision – in short, "self-evident" ideas. From this point you can build explanatory scientific theory without any reference to experience the power of his mind just as any reasonable statement to be true to the description of the facts. A good name for it would

intellectualism. In contrast to this theory, empiricism maintains that only experience enables us to judge the truth or falsity of a scientific theory. Pure mind as such, according to empiricism, can never establish the truth of the facts, to formulate this truth, we must resort to observation and experiment.

In the mid-twentieth century outstanding Austrian-British philosopher, logician, methodologist Karl Popper (1902–1994), reminding those contradiction between rationalism and empiricism, rightly pointed out that these differences do not add to the philosophy of special honor. Instead, he proposed methodological concept as a synthesis of classical and alternative rationalism, empiricism and its classic later – positivism, which he called critical rationalism.

Thus, the objective of this study is an attempt simplified, concise exposition of the theory of critical rationalism to cause critical discussion lawyers possibility of using its domestic legal science at all levels to consider specific not only theoretical but also practical and legal problems.

In view of Ukrainian philosopher D. Sepetoho main idea of the critical rationalism is that knowledge is carried out not by the induction of certain observed facts to general provisions (as the advocates of classical empirytsyzmu and positivism) and not by deduction of the most common self-evident and undoubted truths of pure reason (believed representatives of classical rationalism), and through trial and error elimination, assumptions and denials, hypotheses and their rational criticism; This idea is expressed in the concept of hypothetical-deductive method and also provides an excellent understanding of the classical concept of rationality, a classical epistemology incorrectly interpreted the idea of rationality. Rationality, in terms of Popper is not associated with any truth or guarantees high probability. Here it comes rationalism in the broadest sense – not as opposed empirytsyzmu, and as opposed to irrationalism.

If the main idea of the concept of critical rationalism tentatively extend the methodology of national jurisprudence, it can be called a theory of critical legal mind, and you can tell that critical legal thinking is that the scientific legal research can be carried out not by rampant among lawyers-pozitivist inductive method and not using popular among supporters of natural law thinking pure deductive method, and using the scientific method of trial and error elimination, assumptions and denials.

Therefore, in this study, the critical discussion of scientists tentatively put forward methodological concept of critical legal thinking and synthesis as an alternative to the main types of thinking that is "diametrically opposed" theories of natural law and positive law theories. The scientific method of trial and error elimination, assumptions and denials can be used legal science at all levels to consider specific legal problems (theoretical and practical).

UDC 34 (094)340.13

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LEGAL SECURITY COOPERATION DURING THE NEW ECONOMIC POLICY (1920-IES XX CENTURY)

The article examines the evolution of Bolshevik policy on Ukrainian and Soviet Union cooperation on the basis of laws and legal acts that determine the legal status of cooperatives.

The situation of cooperatives was determined by various statutes and decrees of state bodies are constantly supplemented, changed or withdrawn each other, because the Bolsheviks did not have a clear, coherent policy for representatives of small and medium private capital, which formed the basis of cooperative organizations.

Analysis of government decrees and regulations, convinced that the government has developed a number of documents which, on the one hand, gave impetus to the revival of production of consumer cooperatives, and the second – to regulate and restrict it, including administrative and even judicial responsibility. Industrial enterprises of consumer cooperatives at the complex for the

Republic during the significant benefits of state tax payments are not received, then when forming material and financial basis for establishing production activities have to rely on their own initiative and business donations shareholders.

Since the late 1920s for cooperatives situation in the country is beginning to deteriorate. The government is working towards a comprehensive submission of all types of cooperatives. From their positions in cooperatives fired people with extensive experience in exchange appointed the new Card, always party members. The lack of experience in cooperatives offset loyalty to the party. There was a new wave of persecution of individual cooperators. Very cooperative system subject to organizational restructuring, gradually engaging in the system of public administration. Economic management techniques were replaced by administrative command. State began to legally set aside each type of cooperatives rigidly defined functions.

In the early 30's NEP was replaced collectivization policies that characterized the strict regulation of economic relations and centralization of management.

UDC 340.132.2

Igor Sytar, *Candidate of Science (law), Doctoral candidate of the National Academy of Internal Affairs*

CULTURAL PHENOMENON IN CRITICAL LEGAL STUDIES (ACCULTURATION ASPECT)

We consider the cultural phenomenon in the context acculturational processes that are the basis of critical legal studies. It is noted that the process of drawing legal structures and norms must meet the cultural level of the recipient. Only then it will be natural in the context of understanding of new ideas and concepts. We study the socio-cultural indicators of society, political and cultural attitudes and mentality, defined legal norm.

Special attention gets comparison of key institutions in the field of constitutional law, as judges, prosecutors, lawyers, civil servants, politicians have to imagine how the one or another legal system, to determine social and legal regulators in various jurisdictions.

Defending and protecting national interests, the reception of universal values based on the preservation and development of national identity. For the analysis of comparative law aims to analyze the socio-cultural and economic indicators of society, which is the key to understanding the law, the analysis of political and cultural settings destinations that forms the environment regulation and thus defines itself a legal rule.

Particular attention is drawn to modern constitutional law on constitutional paradoxes borrowing. Certainly, borrowing inevitable, because any legal system that undergoes transformation requires new constitutional principles and mechanisms. Borrowing is carried out when the developer of a new constitution faces a common problem and solve it looks in other constitutions.

Cross-cultural comparison actively used to improve the constitutional rights of national legal systems as cultural influence methodology includes not only borrowing but also rejection, rejection of constitutional ideas that fundamentally not perceived and numerous examples show that transition periods "rejection" play a significant role.

The main purpose of comparative law – the study of legal traditions, which are based on historical sociocultural construction. the process of borrowing other legal structures should be more natural, meet mental characteristics and fundamentals of traditional society.

It is emphasized that the identification of the legal system of Ukraine in the process of integration into the global legal space possible for recognition, upholding and protecting national interests, the reception of universal values based on the preservation and development of national and cultural identity.

UDC 340.134

Oksana Chapliuk, *Candidate of Sciences (law), Associate Professor of the Kyiv University of law of the National Academy of Sciences of Ukraine*

THEORETICAL AND LEGAL GROUNDS OF HARMONIZATION AS A MEANS OF ENSURING THE NATIONAL LEGISLATION NORMS COMPLIANCE WITH THE INTERNATIONAL LEGAL STANDARDS

The article refers to the relevance of the chosen research topic that dedication clarify theoretical – legal principles of harmonization as a means of ensuring compliance with the rules of national law with international legal standards. The study of these aspects of lawmaking will enable the role and place in the process of harmonization comply with national law with international legal standards.

In the article the author focuses on the specific dynamic characteristics that lead to the intensification of international cooperation in various spheres of activity, and thus leads to a significant intensification of the implementation of national and international law-making process.

In particular, attention is focused on increasing the level of international cooperation, the emergence of new areas of society that are the basis for the implementation of new processes and state building law-making process nature and need to be brought into line with the rules of national law with international law and international standards. Thus, increasingly there is a need to develop some common legal behaviors or foundations that provide only a simplified mechanism functioning states in the context of strengthening international cooperation among themselves. Therefore, at the present stage of development of legal science and practice significantly updated issues related to the development of universal and harmonized legal documentation can provide a simplified mechanism for the legal, economic, social and other areas of integration of modern states.

In terms of this should be given to theoretical – legal aspects of harmonization that provides comply with national law with international standards.

The author of the research analyzed existing legal literature various scientific approaches scientists on the characteristics and isolation of ways for compliance with national law and international norms and standards; description of the nature of the model act as the main means of implementing harmonization ensures compliance with national law norms and standards of international law.

Based on studies of scientific material author draws attention to the fact that harmonization is complex intrinsic nature, applied and institutional, as well as the best, efficient and effective way that fully reflects the process and ensures compliance with international law and international standards and defines the process and content integration laws of individual states, which generally provides quality formation and proper, common legal space.

UDC 343.3.7

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FEATURES OF THE ESTABLISHMENT OF THE HIGHER REGIONAL COURT IN LVIV AS PART OF AUSTRIA AND AUSTRIA-HUNGARY (1855–1918)

In the article, becoming and development of the Higher regional court is shown in Lviv in composition Austria and Austria-Hungary. on February, 23 1855 the Appeal court was reorganized in the Higher regional court that was an appellate instance for regional and circuitous courts on territory

of Galychina and Bukovyna. The chairman of this court was a president. As the second and third instance the Higher regional court took shipping, that at first was examined by a regional court, and also businesses that examined to the district, and then regional or circuitous courts. However to give to him complaints about the sentences of courts it was forbidden in criminal cases, as these sentences darted out the courts of jurors. To the competence Higher of regional court, as to the court of appellate jurisdiction, entered: 1) businesses civil, including bill of exchange disputes, trade spores; 2) matters of the mountain rule-making; 3) businesses in relation to appeals on the decision of consulates in Yassach, Halaci, Izmail and Tulche; 4) criminal cases; disciplinary businesses. In a conduct the Higher regional court in Lviv there were all regional and circuitous courts on territory of East Galychina and Bukovyna.

1855 to the Higher regional court, when he was yet named the Appeal court, had next structural parts: presidium, civil senate, criminal senate. After 1855 the Higher regional court consisted of five structural parts – presidium, or presidiums department, civil senate, criminal senate, disciplinary senate for judges-notaries, disciplinary commission for the office workers of court and prison guard. In addition, there were an account department and office.

It is shown that for all Galychina and Bukovyna the Higher regional court in Lviv remained an operating judicial body after the acceptance of the Austrian constitution in 1867 He was the second instance for circuitous and third for district courts in civil cases. At the beginning XX of century there were two higher regional courts in Galychina – in Lviv and Krakov.

It is marked that the Lviv higher regional court on the eve of First world war was divided into seven senates, each of that served as a higher instance concrete circuit courts (separately in civil and criminal cases). Every senate had his chairman, two deputies, four members and four their deputies. In addition, there were two senates in him.

The first engaged in skilled questions, and second disciplinary businesses. The office of this court was headed by her director.

UDC 340.12

Iaryna Dupai, *postgraduate student of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

SOME ASPECTS OF TEMPORAL VALIDITY OF NORMATIVE LEGAL ACTS

The relevance of this article is stipulated by the necessity for scientific understanding of normative legal acts validity which is the determinative concept of legislative process, for the validity is exactly what to be lost due to violation of Constitutional procedure which defines the process of Ukrainian law consideration, adoption and entry into legal force as per Article 152 of the Constitution of Ukraine.

The condition for laws (as well as other normative legal acts, which determine citizen rights and duties) to become valid is their being made available to the public according to regular proceeding. The violation of the Constitutional procedure pertaining to law adoption and entry into force, as per Article 152 of the Constitution of Ukraine, is the reason for a law to be deemed as unconstitutional according to the decision of the Constitutional Court of Ukraine (hereinafter referred to as CCU) making it or its separate provisions lose legal force from the day the CCU adopts the decision on its unconstitutionality.

This is precisely why the supplying of legislative environment for ensuring the realization of guarantees provided in the Article 57 of the Constitution of Ukraine, specifically the guarantees pertaining to the right of citizens to know their rights and duties, is increasingly becoming one of the most relevant issues in the context of given topic.

The article covers the outstanding problems of legislative practice related to determining the moment when normative legal acts enter into force and their implementation begins what sometimes

is accompanied by the violation of guarantees provided in the Article 57 of the Constitution of Ukraine.

The author provides the analysis of such an issue as different interpretations and inhomogeneous usage of notions like "entry into force of normative legal acts", "implementation of normative legal acts" and others. The focus is made on essence and meaning of these notions, and the conclusion about their synonymy is drawn.

UDC 340.12

Vita Kozachenko, *applicant of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

REVOLUTIONARY CONSCIOUSNESS: THE TEMPORAL DIMENSION

The article considers the questions of the role of consciousness in the regulation of social relations. It is noted that in a stable socio-political development, the main tool of legal regulation act regulations. In a period of transformational change, in particular, associated with the revolutionary events, the main element of the mechanism of legal regulation is usually a sense of justice.

To elucidate the role of consciousness in the regulation of social relations is important not only from the point of view of historical and legal science, but in the context of the General theory of law. In this regard, it is noted that terms such as "revolutionary consciousness", "awareness of the working masses", "socialist consciousness" are used essentially as identical. In support of specified thesis provides relevant examples from the first years of the Soviet power.

It is noted that the basis of revolutionary justice was proletarian consciousness, which, in turn, was Marx's theory of the progressive role of the proletariat in social progress. Proletarian consciousness expressed interests and needs of workers, their ideas about social justice, it was based on the awareness of the need to organize and establish public life after the transition of state power by the working class. Therefore, legal consciousness is directly included in the system of regulating the behavior of people in the legal field, in particular in the revolutionary period. Awareness not only and not so much "a separate part of the mechanism of legal regulation, it permeates the entire mechanism reflects it affects him in General. The revolutionary sense of justice served as a criterion when deciding whether to use the pre-revolutionary law. If it is impossible to apply the pre-revolutionary law and in the absence of the Soviet law for data relations courts decide criminal and civil cases, driven primarily proletarian consciousness, when formulating this normative sample for this category of cases. In other words, the sense of justice in these cases was carried out by a function not only of "class evaluation" of normative material, but also directly to the Creator's law. It is clear that the regulatory impact of legal consciousness should not be confused with the influence of legal norms; they are different phenomena legal reality (although they are genetically linked) and regulating their effect is different. However, although the normative patterns of behavior that are born in the sphere of justice, legal and norms in the proper sense of this word is identical, but at the same time, they cannot be firmly opposed, as the norm is usually lying behavior models developed in the field of justice. Such genetic and functional interaction allows to conclude that the legal norms in unity with consciousness organically included in the normative orientation of the society. However, due to the specific historical moment of revolutionary consciousness played (albeit briefly) the role of one of the leading sources of law.

UDC 340.15

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CONSTITUTIONAL LEGISLATION OF WUPR: THE QUESTION OF AUTHENTIC AND INAUTHENTIC TEXTS OF THE "TEMPORARY BASIC LAW", NOVEMBER 13, 1918

Using of authentic texts in the study of legislation is extremely important for successful work of historians of law. The author notes that not all researchers adhere to this principle. The article clarified the origin and modern state of the problem of the wide dissemination of inauthentic text of the "Temporary Basic Law", November 13, 1918 in foreign and domestic scientific and educational legal literature, main provisions of the fifth article, devoted to the state symbols of WUPR are described, historical and legal studies and online resources which highlights the problem of authorship of the "Temporary Basic Law" of WUPR are analyzed.

Using of chronological, retrospective and textual methods allowed the author in the process of study of publications of the "Temporary Basic Law..." in the official printed editions and Ukrainian press in 1918 and their comparison with subsequent reprints of the law in the collections of documents, readings, thematic collections with additional documents and other publications, to find out that the text of the fifth article of the law differs from the original.

Comparing available in the scientific and academic literature texts of the "Temporary Basic Law...", author concluded that they all are identical – edited versions, ie those in which in the fifth article one of the key positions: "national flag is blue and yellow" was deleted. This edited law was published for the first time in the monographic of M. Lozyns'kyi (Vienna, 1922).

During nearly one hundred years this publication served as the source for further copying and duplicating of this inappropriate text of the "Temporary Basic Law..." and continues to carry out this negative mission till now. Unfortunately, this old "fake" was not tracked by scientists of the flagship of national historical and legal science – V. M. Korets'kyi Institute of State and Law. – I. Kresina and O. Batanov, which composed the collection of documents recently, in 2011. In this regard, there is no answer to the question whether it was an unfortunate technical error or M. Lozyns'kyi didn't not perceived blue and yellow colors as symbols of WUPR and thus expressed his protest.

The article states that among all available today readers on the history of Ukraine and History of State and Law of Ukraine, collections of laws, documents and materials only the second volume of five-volume documentary publication dedicated WUPR (Zakhidno-Ukrayinska Narodna Respublika 1918–1923. Dokumenty i materialy. U 5-ty tomakh. – T. 2. – Ivano-Frankivsk, 2003) contains authentic text of the "Temporary Basic Law...", referring to the official edition of 1918, in all other publications we can find "abridged" text.

Thus, even a brief statement of considered issues shows that, despite the almost centennial period of the study of constitutional law of WUPR, many aspects of this multifaceted problem even today still scarcely explored and controversial and require a more thorough study.

UDC 342.722

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EQUALITY OF RIGHTS AND FREEDOMS OF MAN AND CITIZEN IS IN UKRAINE REGARDLESS OF THEIR POLITICAL PERSUASIONS

The article examines the concepts and components of equal rights, regardless of political beliefs as part of the constitutional principle of equality. The issues of equal rights and freedoms in Ukraine, regardless of politic beliefs.

Equality of rights and freedoms of all persons, regardless of political beliefs is one of the most important components of equality in general. This, and not an imaginary political pluralism can be implemented only on condition that the democratic society and in the legal conditions of the country. It is the duty of the state to provide legal guarantees of equality of citizens regardless of their political beliefs. This principle is recognized internationally.

Political parties offer an opportunity for citizens to participate in its public mechanism of power, a tool in fighting for their beliefs and interests. And this fight losing individual, it becomes socially significant character. Political parties help citizens understand the possibility of combining personal interests with the interests of a particular group. And due to this reduced the destructive potential of such a struggle. Thus created barriers to social upheavals, address issues of public safety.

At the same time, political pluralism and a multiparty system, recognized as one of the foundations of the constitutional system of Ukraine objective implies not only a plurality of parties, but also the legislative regulation of the procedure for their establishment and continued functioning. Basis for the existence of political parties is the presence of different views and beliefs.

Ever since the ancient civilization as one of the essential principles of a democratic state structure approved the principle of selectivity and turnover of public office as the highest state level and local community level PA. The right of citizens to participate in the election of representative and executive bodies of state power and local self-government has not lost its relevance, by contrast, is the criterion of democracy modern states.

Nowadays, the principle of equal suffrage are an integral and indispensable element of a democratic election system. The essence of this principle is that citizens possess election take part in elections on an equal footing, or as specified in the applicable national electoral legislation, citizens of Ukraine participating in the elections on an equal footing. Adherence to the principle of equal suffrage based on providing equal weight of each vote in the election process, which means potentially influence voters at the same election results, the same proportion of votes each voter.

Equality of rights and freedoms of citizens regardless of their political beliefs, prevent discrimination on political opinion – the duty of the State to which it is obliged to carry through not only recognition, but also respect and protection. Implementation of political pluralism is done by improving the system of economic, social, political, legal relations at all levels of manifestation – national and local.

UDC 342.728

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LEGAL PRINCIPLES AND FORMATION OF PUBLIC ASSOCIATIONS: SOME CONSIDERATIONS

Giving clarification of legal principles of formation and activity of public associations is an important issue which reflects the very essence of public associations.

Worth mentioning that aside legislator's attention (in the new Law of Ukraine "On Public Associations" dated March 22, 2012 – hereinafter "the Law") remained a list of principles of formation and activities of public associations that previously were fixed in the former Law of Ukraine "On Associations of Citizens" dated June 16, 1992. Such principles as the rule of law, democratic solution of all major issues related with public associations, equality of their members and free choice of areas of its activities were not preserved in the Law.

Therefore the Law should be amended with the mentioned principles which, at the same time, contribute to a more complete and clear definition of initial principles of creation and activities of public associations. Legally defined list of principles in Article 3 of the Law shall not be considered as something having closed nature or being identified once and for all. Other principles may appear with time that is why we consider it appropriate to name the Article 3 of the Law as follows: "The basic principles of the formation and activities of public associations".

Article 3 of the Law enshrining the principles of the formation and activity of public associations can be described as: 1) the article that contains a list of principles; 2) the article which contains a brief description of the principles' nature.

Considering how the principles of formation and activity of public associations are reflected in the Law, we may state that these principles: i) have become regulatory values; ii) considered to be a source of further development of the legal principles and law enforcement practices; iii) are interrelated expressing the essential properties of the same phenomenon (formation and regulation of public associations); iv) have independent nature, reflect certain essential properties and therefore can be considered separately from other principles.

The principle of voluntariness is not limited only to people's personified attitude to the idea and targets of public association. Its composition and content is much broader. Among the key features which are essential for principle of voluntariness is the fact that the initiative to create a public association should not proceed from persons of public law, it must be established without force, based on initiative with the support of masses and public.

The essence of the principle of equal rights in the formation and activities of public associations may be described as: 1) equal enjoyment of rights granted to public associations by the Law (equality); 2) establishing and applying uniform legal means (rights and obligations) for public associations operating in the same conditions (equality before the law); 3) creating a system of exceptions to the regime of general regulation for the selected public associations. The components of the principle of equality are: (1) equality before the law, and (2) equality. The principle of equality does not imply unequal regulation on creation and activities of public associations in case of existing identical circumstances. Therefore crucial in determining the content of the principle of equality before the law is to identify the presence of essential features which can be considered as the different circumstances allowing application of a different system of legal regulation. The Article 3 of the Law describes these essential features as i) the legal form and ii) the type and status of public association. This legislative wording "equality before the law ... taking into account" in Article 3 of the Law cannot be considered as a departure from the principle of universal equality, but rather its confirmation. The principle of equality should be considered in two aspects: 1) equality of public associations; 2) equality of their members. Article 4 Chapter 1 Article 3 of the Law should be supplemented after the term "equality before the law" with the phrase "and equality".

UDC [340.12+347.112]: 342.1 (477)

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VALUE CONCEPTS AND PRACTICES OF HUMAN RIGHTS ACTIVITIES IN UKRAINE

A problem of mutual relations of the state and a man is practically an inexhaustible source for scientific researches. Realization of constitutional rights and freedoms of the man and citizen is a main criterion of democratic character and the basic legal duty of the state.

The creation of conditions for the realization of providing rights and freedoms of the man is the widespread decision in a scientific environment. To determine one of the concepts of a law activity, it is possible to assert, that it is the activity of public, local, self-government, collective and individual subjects in the civil society for non-admission to break rights and freedoms of the man and also for proceeding of the broken legal state.

In the Ukrainian law science such prominent scientists as M. Kozuiba, V. Pogorilko, P. Rabinovich, P. Stetsuik, Y. Todyka, V. Fedorenko, O. Fritskiy, V. Shapoval and others paid much attention to this problem.

In the law science the correlation of such concepts as “law enforcement” and “law defense” is not well studied. It is thought so because a dogma in relation to primacy of the state above the person, being denied on paper, is firmly considered in the native scientific environment.

The activity of the law-enforcement in Ukraine was aimed to defense first of all state interests. After the revolutionary events of 2013–2014 the situation must be changed.

According to the article 3 in the Constitution of Ukraine, the person, his/her life and health, honor and dignity, inviolability and safety are determined to be the greatest social value in Ukraine. Rights and freedoms of the man and their guarantees determine maintenance and orientation of activity of the state.

The mentioned norm-principle of the national Basic Law is often quoted in the literature on law. But until now there are no clear and certain signs of the law enforcement activity and law defense activity, these signs create serious concept-category misunderstanding.

It is near to true the decision that the law enforcement activity is the government legate activity that influences the behavior of a man or groups of people with the help of the public servant and aimed to proceed the broken right, find it and stop it with the obligatory inhibition of the procedures set in the law for this activity.

UDC 342.72/73(477)

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THE EMERGENCE AND FUNCTIONING OF CIVIL SOCIETY

Every civilized nation, above all, concerned about ensuring the rights and freedoms of man and its free development. Where is achieved most harmonious development of personality both in the civil society.

Civil society is one of its main objectives has a solution contradiction between individual and social needs. Civil society is an area where the contradiction between personal and public are inevitable, but can be solved. Interest of a single individual coexists with the public interest.

The foundation of a strong civil society is a constitutional norm. However, the study of constitutional and legal problems of organization and functioning of civil society is most often carried

out in the science of constitutional law by investigating such an institution of civil society as the local government.

Civil society is an area where the contradiction between personal and public are inevitable, but can be solved. Interest of a single individual coexists with the interests of society, through the institutions of which the interaction with the state. In the modern state with an effective mechanism of legal regulation of civil society can influence the state structures and to protect citizens from undue interference of state structures in society.

It should be noted that the term "civil society" and "civil society" recently received its valuation in the current constitutional law.

Constitutional and legal regulation of relations in the sphere of civil society, is one of the varieties of legal regulation has its own characteristic properties: implemented constitutional and legal means, based on the norms of higher legal force (provisions of the Constitution as the Basic Law).

The idea of civil society associated with the modernization of the social organization of humanity through the full development of a unique personality in a holistic society through the use of modern technologies of social organization.

Under the civil society should be understood independently of the operating state or full or partial support for the latest social structures.

According to the legal nature of constitutional legal mechanism of regulation is specific, but at the same time it is part of the mechanism of legal regulation, so it has its own features that characterize the mechanism of regulation.

Thus, the state should influence the development of civil society, civil society turning into a puppet. In order to ensure a balance between such exposure and while recognizing the partial self-regulation of civil society can be an effective mechanism for effectively functioning constitutional and legal regulation of social relations associated with the emergence and functioning of civil society.

UDC 340.111.5

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MODERN FORMS OF BRINGING IN OF TERRITORIAL SOCIETY ARE IN A MUNICIPAL MANAGEMENT

The role of public opens up in the process of forming of viable and effective local self-government. Forms of bringing in of citizens to the decision of questions of local value, existent and new forms of collaboration of local authorities with a population in particular. World experience testifies that politics that on the stage of forming uses wide support of public has more chances on successful embodiment, than politician that generates considerable public opposition or simply unknown to society. Public plays a very important role in execution administrative decisions and realization of control after their implementation.

The necessary condition of building of the democratic, legal social state which at constitutional level proclaimed Ukraine is forming of viable and effective local self-government. Therefore, it is impossible to imagine the modern civilized democratic state without the valuable and effective system of local self-government. Clearly, that most close and the most effective collaboration of power and society is possible, above all things at local level. What perfect here was not state power, it never will become viable and effective, if there will not be self-government on places. Bringing in of public to the collaboration with the organs of local self-government is the necessary condition of openness and efficiency of their activity.

Subjects of local self-government, in accordance with Constitution and laws of Ukraine, carry out certain activity. Peculiar own them, foreseen the current legislation of Ukraine legal forms which determine an optimum mechanism for realization of functions of local self-government.

Becoming and development of forms of activity of territorial societies in Ukraine is very issues of the day in becoming and functioning of institute of local self-government, because these forms are based on emancipation of civil initiative of local concords, growth of social activity of every habitant, bringing in of population, in a self-governing process.

This analysis of the state of the use of new, modern forms and methods of co-operation of organs of local self-government with the population of territorial societies in modern foreign practice testifies to the necessity and actuality of their application in Ukraine and perfection of already existent methods of co-operation.

Only joint efforts of local-authority and population will be instrumental in strengthening of not only local self-government but also local democracy, in a country. Therefore, one of modern tasks for local self-government there is bringing in as possible of greater amount of citizens to the decision of issues of the day of society.

UDC 342.25; 342.34; 352.001.36

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THE ROLE OF THE FUNCTIONAL METHOD IN THE STUDY OF THE LEGAL NATURE OF THE CITIZENS' SELF-ORGANIZATION BODIES

The present article investigates the main functions citizens' self-organization bodies as the subjects of the local self-government in Ukraine, theoretical and practical problems of their realizations'. The role and value of the functional method in the study of the legal nature of the citizens' self-organization bodies.

Functional analyses of the citizens' self-organization bodies facilitate penetration of municipal legal nature of the business of local self-government, disclose the amount, nature and scope of their activities. Only through the concept of functions provided clear identification of the phenomenon of local democracy.

Proved that functional analysis, being one of the main methods of research of social phenomena, allows to know the content and nature. Understanding the nature of local self-government is an important component in determining his place in complexly organized structure of society. Functions of manifest function through its agencies, as part of the basic functions of detecting local self-government institution serves as a conceptual framework for defining the functions of local self-government.

The relevance and importance of consideration of this issue in the context of research of the citizens' self-organization bodies functions defined on the one hand, large-scale transformation processes taking place in recent years, socio-political, economic, spiritual and cultural life of communities, some people – members of these communities and groups, united by different interests, modern villages, towns and cities that are geographically spatial self-organization and self-management of local communities, other subjects functioning of local self-government.

On the other hand, feasibility analysis methodological principles of research of the citizens' self-organization bodies functions defined general scientific trends, changes that occur in modern jurisprudence, including the emergence of new scientific fields and disciplines, among them a special place dealing with Municipal Law.

According to the author, the relevance of the functional method of research municipal legal phenomena and processes, including the problems of the citizens' self-organization bodies due to the following factors:

1) fixing the constitutional principle of equal recognition and guarantee of local self-government (Art. 7 of the Constitution of Ukraine) and opportunities village, town and city councils to allow residents of the initiative to create a house, street, block and other of the citizens' self-organization bodies and assign them part of their own competence, finances and property (part 6 Art. 140 of the Constitution of Ukraine);

2) formation in Ukraine of civil society, strengthening the state's role in these processes and the formation of local self-government;

3) declaration of strategic course of comprehensive decentralization of state power, promotion of local self-government, which were, formed as a result of deregulation of local authorities, which were former local council.

The results of research give opportunity to institute the citizens' self-organization bodies in Ukraine in accordance with internationally-legal standards in the sphere of local self-government.

UDC 342.511

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THE LEGAL STATUS OF COORDINATION, CONSULTATIVE, ADVISORY AND OTHER SUPPORT AGENCIES AND SERVICES OF THE PRESIDENT OF UKRAINE, THEIR FUNCTIONS AND POWERS

This article reveals based on analysis general principles of organization of the above-mentioned authorities, their functions and powers, as well as basic characteristics of the legal status of coordination, consultative, advisory and other support agencies and institutions of the President of Ukraine, namely the creation, purpose and target nature of their appointment.

General legal basis for their establishment and functioning the Constitution of Ukraine. Thus, Basic Law of Ukraine contains both joint to all of them common ground for this by consolidating presidential powers in Ukraine to create within the funds provided by the State Budget of Ukraine for the exercise of their powers consultative, advisory and other subsidiary bodies and services (para. 28 hours . 1, Art. 106), and at the highest levels of regulatory activity involves some of these bodies – in particular, such as the National Security Council of Ukraine (Art. 107), the President of Ukraine in Crimea (p. 139).

The powers of all coordination, consultative, advisory and other subsidiary bodies and services of the President of Ukraine differ in that the objective function due to their difference, but when they have a common and single purpose – to ensure the implementation of the President of Ukraine of its powers.

Establishment of coordination, consultative, advisory and other subsidiary bodies and services of the President of Ukraine, regulatory settlement law level of their legal status, their liquidation or reorganization (by merger, division, acquisition, conversion or separation) is the exclusive prerogative of the President, with specific to the bodies of the legal principles which defined art. c. 107 and 139 of the Constitution of Ukraine, p. 4. 5, p. 3. 37 of the Constitution of the Autonomous Republic of Crimea, and the laws of Ukraine "On the National Security and Defense Council of Ukraine" of 5 March 1998 p. № 183/98-BP and "On the President of Ukraine in Crimea" on March 2, 2000 p. № 1524-III.

Making decisions on personnel staffing their coordination, consultative, advisory and other subsidiary bodies and services are the exclusive authority of the President of Ukraine, subject to the legislation of certain features of formation of collective bodies, becoming a part of which is provided by the position (eg, in accordance with Part 5, Art. 107 of the Constitution of Ukraine, ch. 2, Art. 6 of the Law of Ukraine "on the National Security and Defense Council of Ukraine" of 5 March 1998 p. № 183/98-BP of the defense Council of Ukraine for the post include the Prime Minister of Ukraine Minister of Defence of Ukraine, Head of the Security Service of Ukraine, Minister of Internal Affairs of Ukraine, Minister of Foreign Affairs of Ukraine).

The only (centralized) subsidiary body of the financial, logistical, transportation and medical support of the President of Ukraine, the National Security Council of Ukraine, Administration of the President of Ukraine and other established President of Ukraine consultative, advisory and support bodies and service is a state administration.

Depending on various factors coordinating and consultative, advisory and other subsidiary bodies and services under the President of Ukraine can be created with legal status or without status (in this case the activity is carried out on a permanent or temporary basis).

UDC 342.565

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CONSTITUTIONAL COURTS OF UKRAINE AND LITHUANIA: ORGANIZATIONAL AND LEGAL ANALYSIS

In the article is shown legal organization of the Constitutional Court of Ukraine and the Republic of Lithuania, because a question of constituonality of laws and legal acts is an essential element for the formation and development of the society and the state as a whole.

The aim of writing this article is to illustrate the comparative organizational and legal analysis of the Constitutional courts of Ukraine and Lithuania, as the countries which work closely together.

As a result of the study of literature, there are the views of the legal scholars, such as: as Godovanets V., Savchin M., Selivanov A., Sovhyrya O., Tkachuk P., Frytskyy O., Shishkin V., Yuschyk O. and the operation of the Constitutional Court of the Republic of Lithuania was examined by Birmontiene T., Zhylys Y., Kuris E., Mialovytska N., Pavilonis V.

A comparative analysis of the organizational and legal activity of the Constitutional courts of Ukraine and the Republic of Lithuania, the order of formation, the powers of Constitutional courts is made. The analysis of the legislative depth of norms of the Constitution of Ukraine and the Republic of Lithuania and other legal acts of the constitutional paradigm are made. It is found that the order of formation and the composition of the Constitutional Court of the Republic of Lithuania somewhat differs from the Constitutional Court of Ukraine.

The procedure for appointment of judges of the Constitutional Court of Ukraine provides a system of checks and balances in the legal and democratic state, which promotes mutual accountability of various branches of the state authorities, in contrast to the organization of the Ukrainian system of constitutional review, the judges of the Constitutional Court of the Republic of Lithuania shall be appointed only by the Seimos (Parliament) from among the candidates proposed by the President of the Republic, the Head of the Seimos and the President of the Supreme Court, making the usurpation of the power by the parliament impossible but can create obstacles for the appointment of judges proposed by the President of the Republic and the Head of the Supreme Court.

The good news is that one of the most important factors of providing transparency and rule of law in the Republic of Lithuania is the procedure for changing the composition of the Constitutional Court by one third every three years, the procedure of organization and composition of the Constitutional Court of the Republic of Lithuania provides some advantages in comparison with the Constitutional Court of Ukraine.

UDC 342.922

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LEGAL ADMINISTRATIVE REGULATION OF RELATIONSHIPS BETWEEN CITIZENS AND PUBLIC ADMINISTRATION BODIES DURING ENFORCEMENT OF ADMINISTRATIVE COERCION MEASURES

The article is devoted to definition of term "administrative enforcement", classification of measures of administrative enforcement within the context of principle of rule of law. The condition of scientific researches and administrative regulation in the sphere mentioned above is analyzed. Attention is paid to general characteristics of measures of administrative enforcement and administrative cancellation.

Administrative enforcement measures are defined as complex of moral, physical, organizational etc measures aimed to prevent violations, to provide public order and safety. Bodies of internal affairs, state's border security services, national security services, supervise bodiesetc use this measures, and mechanism of its usage is defined both by legislative acts and subordinate legislation. The most common measures of administrative enforcement are: personal identity, inspection (screening, luggage screening, and personal inspection of passengers of civil aviation, inspection of sea-going ships and river-going ships and its documents); temporary restriction for citizens in access to particular territory; traffic and pedestrian movement limitations on particular streets and roads; free use of vehicles and communication facilities, which belong to enterprises, institutions and organizations to prevent harmful consequences of emergency situation, for delivery of people, who need emergency medical help to medical institutions, for chasing delinquents and its delivery to police departments; follow-up survey of released convicts; limitation of citizen's rights, connected with its health; introduction of resolution about removal of reasons and conditions which encourage delicts and others.

Measures of administrative cancellation are defined as compulsory law based restriction to continue activity with signs of violation, in particular cases even with signs of criminal offence, aimed to prevent harmful consequences of unlawful conduct, to provide legal proceedings on administrative violations and prosecution of guilty to administrative and criminal – as exception – responsibility. Measures of administrative cancellation are divided into two groups – with general and special function. In its turn, measures of administrative cancellation with general function are divided into main and facultative (supportive measures in administrative proceeding cases).

Main measures of administrative cancellation include: attachment of bodies, who avoid to attend governmental bodies and institutions; administrative arrest, not connected with administrative proceeding; stopping of vehicles, prohibition or stopping of work or exploitation of different objects.

Supportive measures in administrative proceeding cases include: attachment of violators; administrative arrest; personal inspection and inspection of possessions; seizure of possessions and documents, which are instruments or objects of violation, or can be used as material evidence in particular case; suspension of driver from driving and its alcohol inspection.

Measures of cancellation with special function are defined as complex of exceptive, extraordinary methods of administrative enforcement aimed to influence violator by physical force, or even kill him/her.

Enforcement of the principle of rule of law leads to creation such a legal order, which limits competence of public administration bodies due to special mechanisms. Author states that nowadays there is no exhaustive list of measures of administrative enforcement. This situation is not relevant for rule-of-law state, because administrative enforcement circumscribes rights and liberties of citizens. Administrative enforcement is regulated not only by the Laws of Ukraine, but delegated legislation as well, which contradicts to The Constitution of Ukraine and principle of rule of law in general. Author suggests to define exhaustive list and administrative enforcement procedure on legislative level.

UDK 342.925

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REVIEW OF ADMINISTRATIVE JUDGMENTS UNDER EXCEPTIONAL CIRCUMSTANCES

The aim of the article is the need for defining the concept and characteristics of review of administrative decisions under exceptional circumstances to facilitate theoretically the development of procedures for administrative appeal.

Research methods are legal phenomena epistemology and scientific principles and conceptual provisions developed by specialists in the field of administrative and administrative-procedure law and so on. In the article are used logical-legal, system-structural and other methods of learning.

On the basis of recent publications analysis is noted the need to improve legal regulation through legislation and appropriate generalization of judicial practice to review administrative judgments under exceptional circumstances.

It was established that the subjects of judicial review of decisions under exceptional circumstances in the Supreme Court of Ukraine are: court decisions in administrative courts after their final review and in a court of cassation; judgments of the Supreme Court of Ukraine in administrative matters, which are recognized by the international judicial institution, whose jurisdiction is recognized by Ukraine as infringing international obligations of Ukraine.

As the objectives of review of judgments under exceptional circumstances, are defined: setting (definition) of procedure, conditions and requirements of identical application by the court (courts) of the same norm of law; correction of errors done by court (courts) of cassation in matters of application of norms of substantive or procedural law; formation of judicial practice and determination of policies and ideology of application of the law for the courts of general jurisdiction, because the decisions of Supreme Court of Ukraine must be taken into account when considering the cases and they carry precedential nature.

In this article are analyzed the scientific approaches to the nature and characteristics of the proceedings of review of judicial acts under extraordinary circumstances in administrative proceedings. The concept of institute of proceedings for review of judicial decisions under exceptional circumstances is defined. The regulatory features of the proceedings to review cases in this important field of trial are investigated. The range of problems that require further doctrinal development are outlined.

The article concludes that the proceedings of cassation review of judicial decisions under exceptional circumstances require legislative improvements especially in the light of truthful and just trial provision, determination of their submission of competence review by the Supreme Court of Ukraine

UDC 342.95

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ADMINISTRATIVE AND LEGAL PRINCIPLES CONTROLLING BANKS TO DETERMINE THEIR ABILITY TO PAY AND THE INTRODUCTION OF AN INTERIM ADMINISTRATION IN TIMES OF CRISIS

The article deals with administrative law principles of control of banks, in particular, determining their ability to pay and the introduction of an interim administration in times of crisis. Analyzes the legal security concept of "special period." Identify issues related to the methodology of organization of banking supervision by the National Bank of Ukraine in the special period. Special attention is paid to the legal regulation to control banks in their ability to pay and the introduction of an interim administration in times of crisis. The ways of improving the monitoring of banks to determine their ability to pay and the introduction of an interim administration in times of crisis.

UDC 342.922

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DISCRETION AS THE SPECIAL ELEMENT OF EXECUTIVE AUTHORITIES' POWERS

Questions of legal nature and intercommunication of executive authorities' powers and discretion are examined in the article. Strengthening of role of discretion in the field of administrative activity renders constantly growing impact on lives of citizens influenced by the decisions of administrative bodies.

The substance of competence of executive authority body is composed of powers – certain rights and duties of a body to operate solving certain questions determined by this competence. Executive power body is provided with authoritative powers and carries them out according to the law.

Discretion constitutes special part of powers; it is possibility of authorities to elect this or that variant of use of the rights and duties at its option, i.e. to choose, estimating certain situation, one of a few variants of actions (or to restrain from actions) or one of variants of possible decisions.

The problem of correlation of "discretion" and authoritative powers of executive authorities is stipulated by the fact that discretionary constituent of powers, being the phenomenon of the reality, sometimes conflicts with essence of law as legitimate limitation of freedom, and vice versa – can be the best display of constitutional state.

Concepts of "powers" and "competence" of executive authorities are differentiated in the article according to their content. Scientific approaches to correlation of concepts "powers" and "competence", "discretionary powers" and "administrative discretion" are considered.

It is found that "competence" of executive authorities is considerably wider phenomenon, than "powers"; in fact, "competence" includes not only rights and duties of authorities but also other elements forming status of a body.

It is determined, that presence of authoritative powers of government executive bodies is the special condition for discretion. Discretionary powers are inalienable part of authoritative powers. Nature and sense of executive authorities' discretionary powers are determined by its rights and duties. Absence of the unambiguous normative adjusting of executive bodies actions concerning application of discretionary powers was found.

Conclusion is drawn that authoritative character of powers of government executive bodies is a necessary condition for discretion. Discretionary rights and discretionary duties are the constituents

of discretionary powers, and their realization is the clause of discretionary-competence legal relationships stemming. Legislator should determine limits, measure and volume of discretionary powers, as a specific sign of executive power bodies, by means of law. The legislative fixing of concept "discretionary powers of executive authorities" will allow to examine their realization as protracted process, definite state of executive bodies; as acceptable right for discretionary power (administrative discretion) and administrative decision making.

UDC 342.951

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LEGAL SYSTEMS MONITORING AS ADMINISTRATIVE AND LEGAL WAY TO THE LEGALITY IN THE LAW-MAKING OF EXECUTIVE POWERS

This scientific article deals legal monitoring as one of the ways of ensuring legality in law-making authorities. Insufficient level of research and imperfect mechanism to ensure legality in executive bodies causes to a low quality and efficiency of legal acts and violations of rights and freedoms of man and citizen. The objective of monitoring is to support the rule of law.

The main objective of this research is to deepen the theoretical foundations of the legal definition of legal monitoring as a mean of ensuring the legitimacy of law-making bodies of the executive power, and as a means of ensuring the quality of legal acts of the executive power.

There isn't any comprehensive view of legal research of legal monitoring as administrative and legal means of ensuring legality in law-making bodies of executive power.

The author analyses the definition of "monitoring", "legal monitoring" in various scientific sources. As a result, the author made a conclusion that no single definition of monitoring as a legal category and so need to improve terminology and formation of a unified approach to terminological definition of a legal monitoring. This article, also deals about classification of types of legal monitoring.

Consequently, the author stresses the importance of the principle of legality in law-making of executive bodies. The principle of legality in law-making of executive bodies means that executive regulations should be adopted by the executive power within the competence of the relevant body, according to the procedure and principles for adopting executive regulations, publication of draft legal acts, their discussion and adoption, state registration, publication of normative legal acts.

Comparative legal research method allowed conducting summing up research of determining legal monitoring and identifying common features in understanding legal monitoring.

In law-making activity of executive powers the legal monitoring is defined as the legal administrative means to ensure the legality of law-making of executive bodies, the purpose of which is to determine the effectiveness of legal act, developing legislation in accordance with national and international standards, protection human rights and freedoms.

Legal analysis method applied in the analysis of the content of legal norms regulating the activity of verification of compliance with legislation on state registration of legal acts by the executive power.

It is important to understand the importance of legal monitoring the legal acts and the need for regulatory the process of legal monitoring by law, including the Law of Ukraine "About the legal acts".

Finally, monitoring methodology and objective, applying a human rights analysis, using the international and domestic legal standards, and identifying trends and systemic issues in practice of law-making of executive bodies.

UDC 342.9: 346.7

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CONCEPT AND NATURE OF CATEGORY "ELECTRIC POWER INDUSTRY"

The article introduces a theoretical analysis of the meaning of the term "electric power industry". The author offers her own definition of the notion "electric power industry" preceeded by extensive analysis of the current legislation and scientific literature, as well as the specific features of power, given in the author's definition of "electric power industry" and filling it with definitional-interpretative content.

European integration and acquiring the future EU membership, presents the strategic goal of our state being the best way of safeguarding the national interests of building economically developed democracy, the governance of law, strengthening the country's global geopolitical position, in the modern sense of the term. The recently signed association agreement with the EU plainly confirms Ukraine's intention to move in a democratic direction. Yet, the national legal system of Ukraine needs dramatic improvement on one hand, and the implementation of European standards as well as adaptation of national administrative law, in particular, towards the relations in the electricity sector to EU standards on the other hand.

Today, the state of the legal regulation of relations in the electric power sector in Ukraine does not meet modern requirements and needs improvement.

The performance improvement in the sphere of administrative and legal regulation of relations in the electric power industry of Ukraine requires a detailed analysis of foreign legislation, first of all, that of the states with efficient economies, especially the EU member states. A detailed study and analysis of the positive and negative gains of the legal regulation of relations in the electric power industry in major foreign countries will allow to accumulate qualitatively new legal mechanisms for regulating relations of this type.

The energy sector legal regulation related scientific research has been carried out by such national scholars as Aver'yanov V., Hubriyenko O., Drozhzhina D., Dyachkin O., Kayuzhnyy R., Kostrubitska O., Sahir V., Shemshuchenko S. and others. However, insufficient attention has been paid to the administrative and legal relations regulation related analysis of foreign experience in the field of electric power industry.

Objectively, the experience of the world's largest consumers of electricity resources, such as the U.S., China, India and Russia presents the largest interest though as far as the prospective of the European integration is concerned, that of the developed western EU countries seems much more lucrative taking into consideration its high efficiency electric power industry policy, and hence high levels of legal organization of these relations. The Eastern European states are currently increasing their own power generation potential, as well as being similar in many ways to Ukraine present special interest for carrying our this particular research.

UDC 346.62

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TYPES MANAGERS OF BUDGETARY FUNDS AND THEIR ACTIVITIES

In a scientific article explores the regulation of the activities managers of budgetary funds in the budget legal relations entities and how they implement its budgetary and legal status.

Considered the legal personality managers of budgetary funds as subjects of budgetary legal relations in particular, the established norms of the budget law the ability of carriers to be participants budgetary activity.

Actuality of research content, trends, legal regulation of activity the budgetary funds as managers of budgetary funds caused by numerous factors in particular the fact that the scientific solution of these problems is the theoretical basis of the proceedings an efficient budgetary policy.

The managers of budgetary funds are parties to of the budget process as regulated by the law of activities related to the formulation, review, approval of budgets, their implementation and control, consideration of reports on the implementation of budgets that comprise the budget system of Ukraine.

The article states that according to the national legislation of Ukraine, administrators of budget funds are subjects the budget and legal relations – defined by using the law carriers of subjective rights and legal duties and legal responsibility in the budgetary relations, which include: state and national public and administrative entities; public authorities: legislative, executive, judicial and local authorities; state and municipal enterprises, institutions, organizations, social – recipients of budget funds.

Furthermore, in order of realization of programs and activities which are conducted by budget funds, budgetary allocations granted only to administrators of such type of funds. At the same time, budget funds granted to individuals or legal entities that do not have the status of budgetary institutions (recipients of budgetary funds), may be provided for them only through the managers of budgetary funds.

It is alleged that the measures, methods of implementation of budget programs to achieve their goals by managers of budgetary funds shall be accompanied by social or socio-economic benefits that ultimately would provide the empowerment of the public sector, social and economic development of the local community as a whole and the individual as a consumer of public services.

According to the survey proposed to introduce the treasury certification of contracts, excluding liabilities taking over budget assignments, as well as increased responsibility of chief administrators of budget funds for the management of budgetary appropriations and to determine their subordinates the State Treasury Service of Ukraine budget institutions that will perform the appropriate target programs.

Furthermore, in order to fully implementation of budgetary control including internal control over completeness of revenues received managers of budgetary funds of lower level and recipients of budget funds and spending of budget funds expedient justification establishment of the institution of the State Accountant.

UDC 342.924

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INTERNATIONAL RELATIONS BETWEEN UKRAINE AND IRAQ AND WAYS TO COMBAT CORRUPTION AT THE LEVEL OF STATE POWER

The main directions of the international impact of corruption. Criminal law and criminal trials means to combat corruption. Conventional crime. International cooperation in the field of crime prevention and criminal justice.Organization United Nations not only occupies a central place in the system of intergovernmental organizations, but also plays a crucial role in today's international political development. Established in 1945 as a universal international organization that is aimed at maintaining peace and international security and cooperation among States, the United Nations integrates currently 185 countries. The impact of the UN on contemporary international relations and weighty Multi-faceted. Corruption – is abuse of public power for private gain, to third parties and groups, as well as numerous forms of misappropriation of public funds for private use. In addition, corruption phenomena applies nepotism (cronyism, nepotism). Corruption – the abuse of public power for private gain, to third parties and groups, as well as numerous forms of misappropriation of public funds for private use. In addition, corruption phenomena applies nepotism (cronyism, nepotism). Representative of Commission on Security and Defence of the Parliament of Iraq Mohammed Taha Siobhan accused Ukraine of supplying substandard BTR-4 Iraqi army and the late delivery under the contract of 2009.The investigation in respect of the supply of arms to Iraq and Ukraine revealed corruption in the third part of the contract relating to the sale of 420 armored personnel carriers, of which at the moment only put about a hundred cars, despite the fact that since the ratification of the contract took several years," – said Taha. According to the deputy, the investigation revealed that all set BTR "very old, rusty hull, machinery unserviceable. Iraqi parliament demanded that the government set up a special joint committee to investigate the performance of the contract and sue the perpetrators situations. In current assessment of the international organization "Transparency International", Iraq has become the country with the highest level of corruption in the world, Iraq has become a country with the highest level of human rights violations, crime, drugs and arms trafficking and internal wars. Corruption in Iraq, beginning with bribery in the individual and collective scale at local and international levels, extortion and forgery of documents (with false signatures on the payroll to create a dummy associations, institutions and companies) grew to theft of state property. The report of the Ministry of Oil said that "the annual smuggling of oil, carried mafia associated with political parties and sectarian militia units, is about $ 19 million. In 2012, the theme of the International Against-Corruption Day – "Corruption. Your "no" is set. Ukraine, recall, in terms of perception of corruption takes 144th of the 176-year-places in the ranking of international non-governmental organization Transparency International. On UNIAN reported in the representation of Transparency International in Ukraine. Results Corruption Perceptions Index 2012 by Transparency International (ISK) show that despite certain steps of the Ukrainian authorities towards overcoming corruption, the situation remains disappointing," – said in the conclusions of the organization. According to current results ISK, Ukraine received only 26 out of 100 possible points. "Any result less than 30 points, in terms of Transparency International is considered a" disgrace to the nation. "Ukraine last year's figure was 27 points (2.3 points under the old methodology). The state continues to confidently step back, taking his place between the Congo and Papua New Guinea," – the report says Transparency International. Corruption is a serious threat to both the developed countries with strong democratic principles traditions and countries that are undergoing economic and social crisis and only getting in the way of democracy. An investigation into the supply of arms to Iraq Ukraine revealed corruption in the third part of the contract relating to the sale of 420 armored personnel carriers, of which at the moment only put about a hundred cars, despite the fact that since the ratification of the contract took several years, "– said Taha According to the deputy, the investigation revealed that all set BTR "very old, rusty hull, machinery unserviceable.

Iraqi parliament demanded that the government set up a special joint committee to investigate the performance of the contract and sue the perpetrators of the current situation. Criminal law. Includes measures aimed at criminalizing corruption. States Parties to the Convention on combating corruption and take the necessary legislative and other measures as may be necessary to establish as criminal offenses under its domestic law the offenses falling under the definition of corruption. Contracts include corruption among the "conventional crime". "Conventional crime" – the crime, the composition of which is set by international conventions. The fight against corruption is also ongoing criminal proceedings means. Institute for Legal Aid provides the following activities states: Firstly, it is a guarantee and ensure equal rights and remedies for citizens (individuals and entities) states, in their territory. Second, is the development of cooperation between law enforcement authorities of the Contracting States on various related issues within their competence.

UDC 001.102:34:004

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THE TERM "INFORMATION" IN JURISPRUDENCE AND LEGISLATION OF UKRAINE

This scientific article investigates and analyzes the concept of "information" with the legal, philosophical, technological, sociological and logical-mathematical aspects. Special attention is on the analysis of the definition "information" in legal doctrine and legislation of Ukraine.

Determined that the problem of using of the term "information" is legislator's determining of this term by terms "data", "info" and "knowledge" which are not identical, but often used interchangeably. Analysis of the national legal doctrine shows that most scientists duplicate imperfect legal definition of "information" by terms "data", "info" or apply term "knowledge". Not only in domestic but also in doctrinally and legislative levels this terms are determined through one another and used like synonymous. This problem is the cause of terminology and legal conflicts.

The author analyzed syntactic, semantic and pragmatic concepts of information, the concept of hierarchical structure of the universe, the economic aspects of information and made the following conclusions.

The legal concept of "information" should attach a symbolic form that can be decoded and which characterizes by meaning for the sender and/or receiver, and it should have some value, significance for the satisfaction of public or private interests. Pragmatic aspect of information is legally significant, because good, but not the relationship between signs and signified objects, is a inherent category to the concept of object rights.

At the state level hierarchical the concept of "information" should correspond to state functions and its social purpose in society, be an instrument to protect the rights, freedoms and legitimate interests. Legal concept of information should display information processes at the state level as a sovereign political and territorial organization of society, should take into consideration public-governmental aspects, should promote the implementation of the state functions.

Proved that the term "information" should not have the mandatory to be mounted on a physical medium or displayed electronically, and storage medium is required for storing or transmitting information.

Analyzed that in human society the form of presenting information is a sign form.

Concluded that info is the form of presenting information, and data – is a form of information. The data and information identified thus already imply a symbolic form, and therefore the term "information" does not require clarification about the possibility of fixing on a physical medium or display electronically.

Therefore the principally new definitions for "information", "info" and "data" were offered in this article.

UDC 347.9:342.922 (477)

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THE MAIN POINT OF THE LEGAL SUBJECTIVITY OF THE LOCAL AUTHORITY IN THE CASES ABOUT THE FORCE ALIENATION OF LOT LANDS FOR REASONS OF PUBLIC NECESSITY'

The scientific article deals with the question of the nature of the legal subjectivity of local government bodies in the cases about the force alienation of lot lands for reasons of public necessity. Attention is draw to the fact that the foundation is strong-willed legal subjectivity of the local authority, which determines its personality, which manifests itself in the forms of legal capability and legal capacity.

Issues concerning the identification of the time of emergence and termination of local government bodies' capacity to act in court in the mentioned category of proceedings, as well as the relation between local government bodies' legal capacity in various branches of law and their capacity to act in court, are investigated. Concept of local government bodies' legal capacity to act in administrative court is defined. Certain aspects of exercising by municipal authorities their legal capacity to sue under administrative law in the mentioned category of proceedings are analyzed.

The article describes the established by law prerequisites for local government bodies to file a suit against a natural or legal person claiming condemnation of land parcels owned by them for reasons of public necessity and taking thereof into municipal property. It provides the definition of the content and scope of the legal capacity to act in administrative court of local government bodies as of public authorities empowered to initiate land alienation procedure.

The article investigates the specific features of the facts in issue of a plaintiff, a local government body in this category of administrative cases, concrete procedural rights and obligations as one of the elements of its legal capacity to act in administrative court.

The article provides a conclusion that further investigation of the nature, content and range of issues concerning legal capacity of local government bodies to act in court on different categories of cases under administrative law will contribute to the effective implementation of the goals of administrative proceedings, identification of substantive and procedural law conflicts, discovery of the best ways to eliminate them.

UDC 346.14+346.16

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SYSTEM AND ORGANIZING FUNCTION OF ECONOMIC LAW IN MODERN WORLD

The article is dedicated to the subject of system and organizational function of economic law in modern world, which is successfully implemented due to its method.

The formulation of single method of economy law as a method of interests balance is proposed.

Specialization was the distinctive feature of science in 19th century and at the beginning of 20th century. On the contrary, in modern world integration of skills, knowledge and science is a new trend. First manifestation of this trend is the appearance of new science at the junction of already existing ones; the second one is the development of common approach to different objects of research.

Still in 1970s while developing the system of law regulation scientists suggested considering not only the subject of legal regulation, but also its objectives to provide system analysis of intra- and inter industry links between law regulations.

Over the past few decades in Ukraine there was created an independent branch of economic law that is performing the system regulation of vertical and horizontal relations in the sphere of social production. Problem of legislation imbalance requires the implementation of system and organizing function of economic law in the whole economic sphere as a holistic sphere of society.

The flexibility of the interests' balance method should provide functional role of the economic law sector as system and organizational sector, that implements dynamic system organization of industry legislation according to the Constitution that regulates relations in economy sphere and guaranteed rights and freedoms by Constitution, realized in local areas of management.

UDC 347.91/.95

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INTERNATIONAL UNIFICATION AND HARMONIZATION OF PROCEDURAL LAW AS THE DIRECTION OF OPTIMIZATION OF CIVIL AND COMMERCIAL PROCEEDINGS IN UKRAINE

The article covers the following two forms of approximation of procedural systems in international law as unification (i.e., development of common supranational procedural rules and regulations) and harmonization (i.e. approximation of legal systems of different countries based on common principles). Since the procedural law many relatively autonomous institutions e.g. jurisdiction and venue, evidence, review of judicial acts, alternative forms of dispute resolution, etc., because within each of these areas may unification and harmonization.

Author states that any State for successful integration into the international community needed reform of procedural legislation, which would approximate them, in some of the most significant features, to those procedural systems that exist in other countries. It should be recognized primarily the needs of legal entities and citizens, not public bodies of control, as they, in most cases, are viewing negatively any attempt to disrupt the "identity" of national law. Given the need for approximation of norms and institutions of civil procedure of Ukraine with international procedural rules in the European Union it should be disclosed the methods and possible ways of its implementation in order to optimize legal proceedings in civil and commercial matters in Ukraine.

It is brought to the attention that some leading scientists believe it is not yet possible and appropriate full or even partial unification of the legislation on judicial organization and activities. Unification as a way to harmonize national laws of the various states can usually be implemented in conditions of a high degree economic, political and social integration. At the same time you can talk on the harmonization of procedural law to adopt some common standards aimed at improving effectiveness and access to justice. However, it also has its limits and should not affect the rational elements of construction of judiciary system and administration of justice that are associated exclusively with national, regional or cultural characteristics of the country.

Author concludes that at each stage of procedural law and the whole system of civil jurisdiction it should be opted, for the civil and commercial justice in Ukraine, most adapted and efficient procedural tools that will most adequately reflect the current realities of procedural relations in Ukraine and meet the need for effective and expeditious judicial protection of civil rights. Therefore, within the article, the author outlines some basic ideas of modern procedural doctrine and of foreign procedural rights which reflect contemporary trends in civil jurisdictions in Ukraine and ways of approximation of certain aspects of national international civil process.

These paths author sees primarily approximation of procedural legislation of Ukraine with the recommendations of the Committee of Ministers of the Council of Europe and the Interparliamentary Assembly of the member states of CIS in the field of justice, harmonization of standards which should be one of the areas of optimization of civil and commercial justice in Ukraine. We also consider the status of judgments of the European Court of Human Rights as an integral member of harmonization.

As a result of analysis above stated international norms author reasonably conclude that international standardization and harmonization of procedural law as direction of optimization civil and commercial justice in Ukraine is requiring priority implementation of internal of judicial differentiation procedure within a single general lawsuit proceedings of civil procedural forms of protection of rights (i.e. within the CPC) which would provide features (special orders) of review of different categories of cases based on substantive criteria, including specific rules (complementing general lawsuit proceedings) of commercial jurisdiction proceedings to resolve the problem of dualism of civil jurisdiction. Along with the differentiation of court proceedings on the basis of substantive criteria, national proceedings require provision of judges with active role throughout the

trial, introduction of the written proceedings initiated by the court, implementation of action proceedings within the simplified procedure for immediate decision upon presentation of clearly groundless claims or as a result of unfair behavior of the parties in the process.

The implementation of the above recommendations should form the basis of civil procedure optimization, increase its effectiveness, ensure the realization of the right on fair hearings within a reasonable time, and facilitate timely and effective protection of the remedy of rights.

UDC 346.2 (334.7)

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CUSTOM ENTITIES AS PARTICIPANTS OF ECONOMIC RELATIONS IN THE STOCK MARKET

The article is an analysis of the legal status of mutual funds (MF) and funds of bank management (FBM) as custom entities – participants of economic relations in the securities market, the justification of proposals to improve the legal status of these funds and protect the rights of participants (investors).

Mutual funds in the scientific literature based on current legislation suggested as a complex property, devoid of economic legal and does not apply to business entities. However, a more reasonable position is considered that mutual funds and similar formation belonging to the particular „custom" entities that do not have entity status, but are endowed with certain characteristics specified subjects. In support of this is the fact that under the law of mutual funds has its own property (assets), which is not owned asset management company (AMC). Asset Mutual Fund AMC carries its own name, but in the interests of mutual funds and reward. AMC in the interest of mutual fund contract, which required states MF details. The assets of mutual funds registered in the prescribed manner by the name of AMC, but with mandatory details of MF. That is, such an incomplete (partial) DFA personality as a party of economic relations completes Asset Mutual Fund – Organisation for households with legal personality.

Similarly, the legislation established the legal status of the FBM, which is not a legal entity. FBM office in the interests of its members carried out under a contract authorized bank. FBM's assets are owned not the bank, and FBM members and segregated from other funds of the bank and funds from other FBM. The law allows for the preservation of FBM by changing the authorized bank, in the event that the assets of the bankrupt bank FBM not included in the liquidation of the bank. So also is the FBM („non-typical") entity with incomplete (partial) legal personality, which supplemented and implemented an authorized bank.

It is acceptable PIF, FBM and other similar categories of participants of economic relations described as „quasi-entities".

Understanding Mutual Fund and FBM as special („non-typical") entities with incomplete (partial) personality can serve as a theoretical basis for the formulation and practical application of certain provisions of the legislation on these funds, especially regarding the management and protection of property rights and legal interests of participants (investors).

It is appropriate to provide, in particular, the possibility of formation of the Supervisory Board of MF and FBM members of these funds; the possibility of replacing AMC Mutual Fund in the event of an ineffective this company, cancellation of license or liquidation; mandatory registration of FBM rules of the National Commission for the State Regulation of Financial Services Markets, and keeping it state register FBM more.

Prospects for further research in the indicated direction associated with intensive study of the legal status of these funds as well as other custom entities.

UDC 349.245

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SOME ASPECTS OF BORROWING THE EUROPEAN EXPERIENCE REGARDING THE LEGISLATION OF ATYPICAL EMPLOYMENT IN UKRAINE

The article is devoted to basic concepts and terms of distant work employment both in Ukraine and world community. Law regulations of atypical employment in other countries are analysed and suggestions are made regarding the implementation of some changes in national law. It is concluded that the major regulator of work relations is a contract.

Due to the absence of normative regulation regarding the distant work in Ukrainian law codes it is the contract that should settle the question. New non standard (atypical) employment forms appeared as a result of economy needs in more profound regulation of work and development of communicating technologies. Typically there are two atypical employment forms – telework and home work. Sometime the so called work sharing is also included, when a number of employee perform the task usually attributed to one person. Telework, telecommuting or remote work, is a work arrangement in which employees do not commute to a central place of work, working at home using the computer assisted technologies.

There is a rather thin distinction between the common work at home and telework. It is a commonplace that those involved in telework rely on computers and other digital telecommunications means to contact their employers contrary to typical persons involved in work at home. What is more important is to assess whether a person that perform work at home or at other locations outside the employer office should be referred to person liable to labour laws or civil law contract. “Work-at-home” and telework contracts being the typically work contracts also possess many features of civil law contracts. For example, employer that can not fairly check the process of work can not be responsible for the safety or observance of the working hours to the same extent as compared to the common contract case.

Remote work is widely used by freelancers who search the Web for the job and both work and receive payment through the e-commerce payment system on-line. Web-related earnings are in wide use, generally placing of banners, ad articles and advertizing. Evidently, the long-lasting and highly visiting sites having unique content possess significant advantage over other websites. Most of the designers work distantly, not necessarily in the field of web design but also developing corporative design, designing goods, logotypes, also working with various services and advertising.

The first condition refers to employer and employee relationships and allows to make a distinction between employment contract and civil contract relations, since teleworkers like copyrighters, journalists, text authors and programmers , are frequently engaged for their services, contracts and copyright orders using civil contract. If the employment relationship with a remote employee were mediated by civil contract , in the event of a labor dispute in a court employee may claim for recognition of the employment contract and prove the regular remote execution of labor functions.

The second condition indicates the workplace. In its most general form, it can be said that the work is considered remote only when it is done at a location which is not controlled by the employer.

And if the location of the employer, its subsidiaries, representative offices and other structural units can be determined without difficulty, the assessment of whether the workplace is a “fixed workplace”, located outside the employing organization and its divisions, is more difficult .

The third condition indicates mandatory use of information and telecommunications networks to interact with the employer when a teleworker performs his or her work functions. Thus, the performance of remote functions by the employee without the use of information and telecommunications networks is not considered as telework.

UDC 341.96 (347.65)

Mariya Mykhailiv, *Candidate of Sciences (Law), Associate Professor, Associate Professor of the Ivan Franko National University of Lviv*

FEATURES OF THE INHERITANCE RELATIONS CONFLICT REGULATION IN UKRAINE

The institute of inheritance is the important part of international private law relations. The transfer of rights and duties from testator to heir including foreign element causes emergence of international inheritance relations. Therefore a substantive as well as the conflict regulation is needed.

Each country has its own inheritance relations legal regulation. That's why the conflict between rules of different countries substantive norms arises and this complicates legal regulation of international inheritance relations. Therefore the researches of conflict norms in this sphere are needed.

The questions of the inheritance relations conflict regulation were subject of researches of such scientists as A. Syvokon', V. Kisil', O. Karmaz, A. Stepanyuk, V. Glushchenko and others. Yet working out a general scientific approach to inheritance conflict regulation of some kinds of testator rights and obligations is still less researched. All this causes a high actuality of the article.

So, the aim of the article is the research of the inheritance relations conflict regulation in general and of some kinds of testator's rights and obligations.

The conflict questions of inheritance were and remain ones of the most complicated questions of Private International Law of Ukraine. Resolving different inheritance disputes, as a rule, generate property relations that are the part of the property relations system of one country and interact with the ownership system of the other one. This gives reasons for each country's laws to regulate these particular relations.

The Law of Ukraine "On International Private Law" does not clearly define which conflict norms should be used to hereditary succession. In article 70 of the Law it is only mentioned that inheritance relations are regulated by the law of the country which was the testator's last place of residence, if only in the will of a testator it has not been chosen the law of the country, a citizen of which he was. According to the content of the article it can be considered that the person's ability to inherit, the inheritance queue and the size of inheritance are to be determined by the law of the country which was the last place of residence of a testator. Still in the law of Ukraine it is not clearly defined what is the last place of residence.

The definition of the term "the place of the residence" except Civil Code of Ukraine is also mentioned in the Law of Ukraine "On freedom of movement and free choice of residence in Ukraine". But still neither of these documents do not define what is the last place of residence and permanent place of residence. So we propose to determine the last place of residence as a dwelling that is situated on the territory of the administrative division where a person has been recently living for the period longer than six months during a year.

According to the Ukrainian laws in the sphere of hereditary succession with a foreign element not the law of the country where the person died is important but the law of the country where testator had the last place of residence in articulo mortis.

Conflict norms in the sphere of testamentary succession are regulated in the article 72 of the Law of Ukraine "On International Private Law". This particular article determines the conflict law regulation of persons' ability to make and to nullify the will, the form of the will and the act of its cancelling. The person's ability to make and to cancel a will and also the form of the will and act of its cancelling is determined by the law of the country, where testator had a permanent place of living at the moment of making a will or at the moment of death.

According to the article a person's ability to make and to cancel a will is determined by the law of the country where testator had a permanent residence at the moment of making a will or at the moment of death. But if a testator was temporary living abroad at the moment of making a will or the moment of death and if the law of that country has different requirements to ability of making a will than in the

resident country, would this cause in this case invalidity of the will. In this connection we think that the question of the person's ability to make and to cancel a will must be regulated be the law of the country where testator has made a will and the questions of inheritance must be regulated by the law of the country where the inheritance property is located if different rule was not mentioned in the testator's will.

The question of the ability of making some kinds of wills is still not really researched. For example if testator on the territory of a foreign country is making the will that is not known in the law of the country of citizenship or in the law of the country of the permanent residence. In this case the question about the legal consequences of the will arises.

The questions of intellectual property rights inheritance in the law are still not clarified and not determined.

Improvement of conflict and sustentative regulation in the sphere of inheritance will give a possibility to eliminate inconsistencies in the law and practice of different countries.

UDC 347.189(477)

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ABOUT THE LEGAL FOUNDATIONS FOR A NAME CHANGE

The article focuses on the distinctions of the content and the implementing rules of a person's right to a name change. Analysis of the current legislation leads the author to believe that the current legislation of Ukraine provides little limited capacity for changing of all the components of the name of the person on it's own accord and at its own discretion. Current rules for a name change are very loyal to the wishes of citizens, have almost no restrictions in the number and quality of changes.

In the author's opinion, some threats of the examining situation are possible, which are the ability of depersonalization of the participant of the particular legal relations. The name change entails the necessity for re-identification the participant of legal relations by other participants. If the re-identification does not occur, it can damage legal relationships, their normal development and complicate the protection of violated rights. The author believes that under the threat of this kind can be found to be all legal obligation, difficulties may arise during the execution of judgments and decisions of other law enforcement agencies, in the electoral process. In addition, frequent name change may have an attribute of the abusive practice serve as a means to abuse the rights purposely to appropriate someone's reputation, authorship, indignity and reputation of another person and so on.

The author proposes to take thought on the reasonableness and practicability of the existing legal basis for a name change at all, considering various possible abuses of this right. Herewith, he refers to the legal acts which had defined the right to a name change, the limits and procedures of this law in the modern Ukraine and which were in force in recent history. He watches different approaches of state to determine the mechanism of citizen's enjoyment of right to a name change. From extremely strict control over the name change , when in fact this change is largely dependent on the will of the official, who had to be explained the name change, to calm and patient attitude to the relevant public desires and complete indifference to the motives of which is a name change, indifference to the frequency of changes, to the quality of the new name that appears after the previous change.

In view of fact that the abusive practice of the name change can damage the binding relations, including the participation of the state, honor, dignity and reputation of individuals, the public interest (for example voters and candidates for elective office), author proposes a reasonable restrictions for the right to a name change on their own accord. In the author's opinion, the name change must be defined within a really good reason (cacophony, the bad reputation of the name, the need to protect privacy, etc.), and secondly, should be limited possible number of name changes.

UDC 347.168

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POWERS OF A NOTARY AS A STATE REGISTRAR

Given the importance of state regulation of real estate and of the civil registration of rights to real estate, to date, is of particular relevance to research the reform of the system and procedures of state registration of rights to immovable property and their encumbrances, including giving powers of a notary public register. Given that scientific sources mostly addresses some aspects of the reformed institution of state registration of rights to immovable property and their encumbrances article is devoted, in fact, the study questions powers as a notary public registrar general.

In this context, the aim of the article is to study generalized powers as a notary public registrar and make recommendations on improving the named institution. To achieve this goal the article the following objectives: get acquainted with the system entities state registration of rights to immovable property and their encumbrances; outline the powers vested in the state registrars and notaries in this area; establish the peculiarities of the powers of the registrar notaries; consider the shortcomings of current legislation on state registration of rights and encumbrances notaries.

Doing tasks, first, found that a change to the previous mechanism of state registration of rights to immovable property and their encumbrances, accompanied by significant difficulties and problems in practice, by far the reformed system of state registration of subjects consisting State Registration Service and notaries. Second, the circle of the powers vested in the state registrars and notaries in this area. Thirdly, it was found that the implementation of notaries public registrar office has certain characteristics, which is expressed in basis of registration and the content of the powers they possess. Also discussed shortcomings of current legislation on state registration of rights and encumbrances notaries (for example, failure to provide notary services due to insufficient regulation of notaries responsibility, lack of coordination on the order of data entry and maintenance etc.).

In addition, the article particularly paid attention to the issue of access to notaries Register of ownership of real property, the Unified Register of prohibitions alienation of immovable property and the State Register of mortgages. In particular, it was found that access to these registers notaries are only used in the commission of the notary of immovable property, and therefore in practice there are some difficulties associated with the inability to provide information to citizens who turn to the notary until the notary's commission (for example, for advice or to verify the reliability of the proposed transaction on real property, etc.). In order to overcome the aforementioned shortcoming, the paper proposed to optimize and simplify the procedure of state registration of rights to expand the powers of notaries in terms of access to registers and enable them to obtain information not only during notarial acts.

Based on consideration of the article formulated conclusions, which focuses on what a reformed institution of state registration of rights still continues to form and develop that should be accompanied by appropriate scientific justification on changes in legislation Ukraine and improving the named institution. In this regard, the findings emphasized the need for further scientific research institute of state registration of rights to immovable property and the legal status of a notary public register.

UDC 347.122/347.15/347.19

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THEORETICAL AND LEGAL BASIS OF LEGAL ENTITY BUSINESS REPUTATION PROTECTION

This article explores theoretical and legal foundations of civil business reputation of a legal entity. The article presents the analysis of extensive scientific research carried out in Ukraine, directly or indirectly related to the business reputation of legal entities and the most meaningful scientific definitions of the legal entity business reputation have been singled out separating the term from related concepts**.**

It has been determined that business reputation of a legal person consists in the information of a legal person of a private or public law, his/ her activity (namely possibility, ability, quality, completeness and timeliness of fulfillment of commitments and duties; professional knowledge, habits and skills of a legal person's staff etc.) which (the information) is formed and circulated by the subjects as well as by mass media. The protection of business reputation of a legal person is characterized as the totality of legal norms and measures aimed at the ensuring, realization of the right to business reputation of a legal person as well as the protection of this right in terms of its recognition, suspension of infringement and calling the guilty person to a civil and legal account.

The civil and legal ways of the protection of business reputation of a legal person is defined as the envisaged within the forms of civil and legal protection of business reputation of a legal person measures that are aimed at ensuring reestablishment, compensation and realization of the right to business reputation of a legal person. The classification of civil and legal ways of the protection of business reputation of a legal person has been done in accordance with the following criteria; according to the degree of regulation: general ways of the protection of business reputation of a legal person (foreseen by Article 16 of Civil Code of Ukraine, except the reestablishment of the position which was before the infringement and recognition as illegal a normative legal act) and special ways of the protection of business reputation of a legal person (refutation, response, confiscation of the circulation of a newspaper or a book etc.); depending on the subject who is authorized to protect the right to business reputation, it has been determined the following ways which are possible t o be applied by the bearer of the business reputation himself; court procedural ways of protection of business reputation; the ways of protection which may be applied by another authorized state body.

It has been stated that the acceptable way of protection of the right of a legal person to business reputation is recognition as illegal a normative legal act of a state body, of an authority body of Autonomous Republic of Crimea or local authority bodies of individual action. On the basis of the analysis of 374 decisions and resolutions in the cases associated with business reputation the conclusion has been made that it is impossible to recognize a normative and legal act by a court as illegal as a way of civil and legal protection of the right of a legal person to business reputation.

UDC 346.1:346.3

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TYPES OF INVALIDITY OF THE ECONOMIC CONTRACT AND OTHER TRANSACTIONS IN THE FIELD OF MANAGEMENT

Economic and legal analysis of the types of invalidity of economic contracts and other transactions in the field of management is considered in this article, the criteria for dividing them into insignificant and contested reviewed here, and also features application of the law on these issues. In the article substantiates that the criterion for the separation of transactions in the paltry and contested nature of the offenses is: if in the case of void transactions violated the rights of the subjects or other rules established by the legislation, in the case of the disputed transaction violated the legitimate interests of entities, where legislation ensures compliance with them, guarantee their rights as provided for by local regulations or treaties. Arguments are justified raising the question of recognition of a void transaction (contract) void and suggested agreed interpretation of the relevant provisions of the Civil Code and Commercial Code of Ukraine.

UDC 347.65/68

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THE ESTABLISHMENT AND DEVELOPMENT OF INHERITANCE LAW IN UKRAINE

Inheritance as a legal institution appeared in the time of patriarchal society. After human death disappeared owner of property. That was the main cause of invention of the inheritance.

For the first time inheritance had been mentioned in the Roman law. Namely, Roman law conducted according to the universal nature of hereditary succession. The adoption of pretor's edicts became a significant development of hereditary in Roman law. It was almost one of the first government acts that settled inheritance relationships and determined the composition of inheritance, business succession, concept of blood (cognitive) relationships. Pretoria has created a special "interdict" to enter into possession of inherited property. Interdict granted protection to persons, who were potential heirs, according to civil law.

Development of inheritance law in many countries started with Roman law.

The first mention of inheritance law at Ukrainian territory appeared in written sources of IX–XII centuries. These includes large amount of ecclesiastical and secular statutes, lectures, agreements between the Greeks and Kiev an Rus, and legal codified act "Rus Truth". The "Rus Truth" contained ecclesiastical, court and princely orders, punishments, family (clan) customs, inheritance law and moral principles in society. Particularly, it regulated composition of heritage testament, made by parents.

Later inheritance law of Ukraine was developed thrice, because the territory of modern Ukraine was under the reign of different countries – the Russian Empire, Duchy of Lithuania, Austro-Hungarian Empire. Therefore, at the time of the October Revolution, the development of inheritance law in the Ukraine was not uniform and had some differences.

In 1918 Decree about the abolition of inheritance was adopted. That Decree, actually, destroyed the inheritance of private property. Institute of inheritance was renovated in the new Decree that was adopted in 1922. After that, 16.12.1922, the first Civil Code of the Ukrainian SSR was adopted. Inheritance law, which had received consolidation in the first codification, essentially reformed legal

system of Russian czarism period. Inheritance could take place in case of not exceeding the maximum –10 thousand rubles in gold after deducting debts of the deceased. Due to the outbreak of World War, legislators adopted a Decree on the law of inheritance and bequest. Standards of this Decree provided the basis of inheritance law nowadays.

So, the article describes the development and establishment of inheritance law institute in Ukraine and its regulation since the emergence of the patriarchal society and the first acts of Roman law. Author analyzed the legislation and scientific researches on historiographical analysis, determined impact on further development of inheritance law on the territory of Ukraine. Standards of inheritance relationships legislation of a Soviet period, particularly, Civil Code of Ukrainian SSR 1922, Civil Code of Ukrainian SSR 1963 with analysis and comparison of modern norms of Civil Code of Ukraine were considered.

UDC 342.951

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PROBLEMS OF THE STATE REGISTRATION OF THE PROPERTY RIGHTS ON REAL ESTATE

In modern circumstances of Ukrainian economy market the privatization of land plots, enterprises, apartments and other objects of state-owned and municipal properties as well as mortgage activity, all of these facilitate have been rapid growth of the real property market. State registration of title to real property is therefore becoming as one of the more disputable issue for discussion which is opening to discussion.

The subject meter of this article is to analyze Ukrainian legislation and there for the legal status of institution of state registration of title to real property from the point of the determining the problems and identifying ways of their proper solution.

There are too many legal problems which are arising on legal practices. The main one concernsa purpose and legal principles for registration of title to real property. Their absence deprives necessary streamlining and efficiency of legal regulation in real property area.

Analyzing the legislation it is obvious that any legislative changes are mainly aimed to solve specific problems, and are not systematic. There is no administrative law concept that would determine fundamentals which have been directed to improve administrative rules which could ensure the legal institutions of state registration of title to real property formation in a proper legal way.

The current situation of administrative and legal regulation in this area is characterized by incomplete information on the titles to real property arisen by 2013. Some aspects of state registration have not received proper settlement and require further improvements and scientific evidence.

One of the goals of the registration system should be the prevention and suppression of crimes and offenses in relations related to real property.

The current system of state registration should be focused not only on bona fide market players, but also on combating any crimes in this area. It should be reflected in both aspects: standards that establish the procedure for registration and cooperation procedures between registration authorities and law enforcement agencies.

Another substantial purpose for registration of title to real property is to ensure monitoring of receipt of funds to the state budget from real property taxation.

However, in order to collect taxes in full taxation authorities (as the state representatives) we should have comprehensive information about both: property owners (users) and facts about disposal of these units associated with income.

Thus, according to the analysis, it is necessary to form a regulatory system concept of registration of title to real property, to enable effective use and development in actions to satisfy public demands as well as legal protections of those actions.

The registration of titles to real property system development in Ukraine should be aimed at increasing investment activity in the country and formation of civilized real property market infrastructure.

UDC 347.6

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LEGAL REGULATION OF MATRIMONIAL PROPERTY IN PROPOSAL FOR A COUNCIL REGULATION ON JURISDICTION, APPLICABLE LAW AND RECOGNITION AND ENFORCEMENT OF DECISIONS IN MATTERS OF MATRIMONIAL PROPERTY REGIMES

The article deals with the efforts of the European Commission to adjust family law of European Union in the part of regulation of matrimonial property relations. For this aim the commission has worked out conflict rules for the establishment of applicable law and rules of judicial decisions' implementation; the competition of courts is established for the resolution of international disputes on relevant topics. The proposal is valuable because it allows to determine the elements of matrimonial property regime. The disadvantage is that the provisions of the conflict rules of Ukraine and EU have disagreements.

UDC 347.77

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SELECTED ISSUES OF TRANSITION OF LEGAL ENTITIES` AND INDIVIDUALS` PERSONAL NONPROPERTY NEIGHBORING RIGHTS

Neighboring rights as part of intellectual property law system were first recognized in 30-s years of past century. It has rapidly changed since neighboring rights of performers, audio-, visual industries and broadcasting organizations received huge income from digital content.

International law recognized neighboring rights in the second part of 20th century. As a result of discussions during the Rome Diplomatic Conference, International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations was signed in 1961. Ukraine became a Contracting Party in 2001. Legal protection of neighboring rights not just made music, video and talk-shows more accessible to the public, but also heightened industries` income.

The Rome Convention regulates economic neighboring rights and states the most important nonproperty right to identification. According to Ukrainian Law "On Copyright and Related Rights", legal persons and individuals have the same right to claim attribution on their performances, phonograms and broadcasts. Attribution right granted to producers of phonograms and broadcasting organizations differs from attribution right granted to performers. Performers have an intellectual input in their performance and should be treated like authors. The problem is to obtain an attribution right by legal entity that was re-branded or merged. Ukrainian law does not provide any legal instrument to change the rightholder of personal nonproperty neighboring right to attribution.

Furthermore, producers and organizations` right to attribution is not fully considered as personal nonproperty right, because was included separately in the title of Article 32 of the Ukrainian Law "On Copyright and Related Rights". Thus it is not determined, if legal persons can waive their right to attribution.

Next problem in obtaining personal nonproperty neighboring rights of performer by third persons is death of mentioned performer. Duration of personal nonproperty neighboring rights is perpetual in Ukraine. The Civil Code of Ukraine, Article 423, grants protection to neighboring rights provided by third persons, not only creators. A few countries, such as, Russian Federation, Canada and Ireland, let people or organizations, chosen by performer, protect performances after performer's death from distortion, modification of, or other derogatory action in relation to the said work, which would be prejudicial to the performer's honor or reputation.

Who can manage those functions according to Ukrainian legislation? I. Berestova offered to give such authority to collective management organizations. But it is impossible due to legislation and the fact that those organizations are to manage only economic neighboring rights. It would be more reasonable to let relatives and heirs to protect performer's moral rights after his death. This is why Ukrainian laws should be amended.

UDC 347.77

Yuriy Boshytskyi, *Professor, Honorary Lawyer of Ukraine, Rector of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

ISSUES OF IMPROVING THE INTELLECTUAL PROPERTY ADMINISTRATION SPHERE IN MODERN UKRAINE

The article is dedicated to issues of improving the intellectual property administration sphere in modern Ukraine.

The author considers the issues of intellectual property public administration, the issues of encouragement in the sphere, particularly material encouragement of the authors and persons, contributing to inventiveness.

The researcher analyses the issues of training the appropriate staff, methods of teaching the subject of intellectual property law in some European countries and the USA.

The paper provides a brief analysis of the main curricula of the World Intellectual Property Organization Academy, distant training in the sphere, in particular.

The article also emphasizes illegal encroachment on intellectual activity results, especially the patent pranks activity.

The considered issues taken into account, the author presents practical advice and suggestions, concerning the current legislation and its enforcement improvement.

UDC 347.77

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ATTEMPTS AT CREATING AND REFORMING LEGAL PROTECTION OF INTELLECTUAL PROPERTY IN HUNGARIAN JURISPRUDENCE

Given the peculiarities of historical development, modern codification efforts evolved with a delay in the Age of Reforms in the eighteen-thirties; with respect to copyright the Bills related to Bertalan Szemere are worth mentioning. After suppression of the War of Independence (1849) and the Compromise (1867), basically Austrian laws were applied.

In the Central-Eastern European countries after the Second World War, intellectual property rights bore certain traces of central economic administration, foreign exchange management, income regulation and censorship. To different extent and for different reasons from country to country, this branch of law nevertheless preserved its main traditional features owing to, at last but not least, several decades long membership in international agreements. The legal field of intellectual property shows continuous progress, without infringement of material principles. Just as in the phase of its

evolution, in the appearance of modern development tendencies, economic circumstances and technological conditions constitute the key driving forces. General features of historical development are reflected by the progress made in this legal field in Hungary too.

Centuries long traditions of Hungarian copyright law, experience of domestic legal development can not be ignored in working out the new regulation. Enforcement of international legal unification and European legal harmonisation requirements do not exclude respecting domestic copyright law traditions at all – they make it definitely necessary to integrate regulation harmonised with international conventions and European Community directives into Hungarian legal system and legal development organically; therefore, we must not put aside the assets of our copyright law in order to fulfil our legal harmonisation obligations. What Hungarian copyright law needs is reforms: renewal that maintains continuity of domestic regulation by exceeding former regulation while preserving the values achieved so far.

The history of Hungarian copyright law is characterised both by successful and unsuccessful attempts at codification, although aborted bills failed due to changes in historical circumstances rather than the standard of proposals.

The Bill submitted by Bertalan Szemere to the National Assembly in 1844 was not enacted for lack of royal sanctioning. Following the age of imperial patents and decrees, after the Compromise (1867) the Society of Hungarian Writers and Artists put forth – again an unsuccessful – motion for regulation; however, the Commercial Code, Act XXXVII of 1875 devoted a separate chapter to regulation of publishing transactions.

The first Hungarian copyright law, Act XVI of 1884, was made following László Arany's initiative, upon István Apáthy's motion. The Act implemented modern codification adjusted to bourgeois conditions, setting out from theoretical bases of intellectual property not superseded ever since.

Later re-codification of Hungarian copyright law was required by the need to create internal legal conditions of the accession to the Berne Union Convention. Act LIV of 1921 harmonised our copyright law with the current text of the Convention, and adjusted our regulation to the results of technological development.

The last attempt at modernising bourgeois copyright law can be linked with the name of Elemér Balás P.; his Bill drafted in 1934 was published in 1947, however, due to political changes this Bill could not become an act.

The development of copyright law of the bourgeois epoch was dominated by the concept of intellectual property, qualifying copyright as proprietary right similar to property right, which was in line with the requirements and needs of market economy and trade. Gradual acknowledgement of authors' rights related to their personality also began; however, protection of these rights did not become the central element of copyright law approach either in theory or in practice. Paradoxically, as a special impact produced by the current ideology, this happened only during the period of plan economy and one-party system.

Our Copyright Act III of 1969 – which is the third one following Act XVI of 1884 and Act LIV of 1921 – was and has remained a noteworthy codification achievement in spite of the fact that it bore the traits of the age when it was made. Due to the economic policy trend prevailing in that period, there was no need to break away from fundamental principles and traditions of copyright; regulation did not distanced copyright eventually from its social and economic function. (Fortunately, it was only theory rather than regulation that was imbued with the dogmatic approach arising also from ideological deliberations that worked against enforcement of the authors' proprietary interests by overemphasising the elements of copyright related to personality.) Perhaps, it was owing to this that Act III of 1969, albeit with several amendments, could for a long while keep up with international legal development and new achievements of technological progress just as with fundamentally changing political and economic circumstances.

Hungarian copyright law in the late 1970's and early 1980's was in the vanguard of world-wide and European legal development: as one of the first legal systems, our copyright law acknowledged protection of copyright to computer programs, provided for royalty to be paid on empty cassettes, settled copyright issues related to so-called cable television operations. Regulation of right to follow and paying public domain was huge progress too.

After coming to a sudden standstill temporarily in the second half of the 1980's, new significant

changes were brought by the period between 1993 and 1998. In terms of actions taken against violation of law, amendment to the Criminal Code in 1993 was of great significance, which qualified violation of copyright and related rights a crime (see Section 329/A of the Criminal Code (Btk.) set forth by Section 72 of Act XVII of 1993). Act VII of 1994 on the Amendments to Certain Laws of Industrial Property and Copyright, in accordance with international and legal harmonisation requirements, provided for overall re-regulation of the protection of related rights of copyright – i.e. rights that performers, producers of phonograms and radio and television organisations were entitled to. Furthermore, the Act extended the duration of the protection of author's proprietary rights from fifty years to seventy years from the author's death, and the duration of protection of related rights from twenty to fifty years. In addition to that, the Act withdrew the rental and lending of computer programs, copies of film works and phonogram works from the scope of free use; and, it required, in addition to the author's consent, the approval of the producer of phonograms and performers for rental and lending of marketed copies of phonograms. It was also an important progress that the 1994 Amendment to the Copyright Act terminated the statutory licence granted to radio and television for broadcasting works already made public in unchanged form and broadcasting public performances, and thereby modernised rules on broadcasting contracts. Act LXXII of 1994 implemented partial modification of the Act.

Following Constitutional Court resolution 14/1994. (II. 10.) AB, instead of a decree in a statute, it regulated legal institutions of "right to follow" *(droit de suite)* and "paying public domain" *(domaine public payant)* important in terms of fine arts and applied arts. Act I of 1996 on Radio and Television Broadcasting also modified the Copyright Act; furthermore, it contains provisions important in terms of copyright. Govt. Decree Number 146/1996. (IX. 19.) as amended on joint handling of copyright and related rights provided for overall and modern regulation of joint handling of copyrights and related rights that can not be exercised individually, and determined the transitory provisions related to termination and legal succession of the Copyright Protection Office as central budgetary agency, aimed at maintaining continuity of law enforcement. Decree Number 5/1997. (II. 12.) MKM on rules of register of societies that perform joint handling of copyright and related rights was made to implement the Govt. Decree. Decree Number A 19/1996. (XII. 26.) MKM raised the maximum duration of publisher contracts to eight years. The amendments implemented by Act XI of 1997 on Protecting Trademarks and Geographical Product Markings and entered into force on 1 July 1997 affected legal consequences that may be applied due to violation of copyright and measures that may be applied in lawsuits brought due to such violations of law. And, on the grounds of the authorisation granted in the new Trademark Act, Govt. Decree Number 128/1997. (VII. 24.) on measures that may be applied in customs administration proceedings against violation of intellectual property rights was adopted. Accelerated legal development in recent years could become complete through overall re-regulation of copyright and related rights.

Act LXXVI of 1999 satisfies these demands, while it builds on recently achieved results. The Act is based on several years' preparatory work. The Minister of Justice set up an expert team in 1994 to work out the concept of the new regulation; furthermore, the Minister of Justice invited the World Intellectual Property Organisation (WIPO) of the UN to assist in preparing the new copyright act; also, on several occasions it was possible to have consultations with the experts of the European Commission. Taking the proposals of the expert team into account, by June 1997 the concept of the overall revision of our copyright rules of law had been completed, which was approved by the Government by Govt. Resolution Number 1100/1997. (IX. 30.). In accordance with Section 4 of this Government Resolution, the Minister of Justice set up a codification committee to develop the new copyright regulation from the representatives of ministries and bodies with national powers concerned, courts, joint law administration organisations as well as interest representation organisations of parties entitled, users and other copyright experts. The draft Bill has been discussed by the Committee both in details and on the whole and on several occasions; the content of the proposal reflects the consensus reached in the Committee in every respect.

UDC 347.77

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THE LAW OF UKRAINE «PUBLIC TELEVISION AND RADIO BROADCASTING OF UKRAINE»: A NEW STAGE FOR THE DEVELOPMENT OF PUBLIC BROADCASTING IN UKRAINE

In this article the author outlined the legal preconditions for formation of public broadcasting in Ukraine. This analyzes the provisions of the current legislation, in particular the new law of Ukraine "Public television and radio broadcasting of Ukraine" and the legislative field of European States.

Suggestions for improving legal protection of the examined relations are made.

UDC 347.77

Olga Bondarenko, *Applicant of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

OBTAINING LEGAL PROTECTION FOR INDUSTRIAL DESIGNS IN UKRAINE: PROBLEMS AND PROSPECTS

The effective and gradual development of modern Ukraine is impossible without its dynamic economic development. This development is usually more based on creation and implementation of economic and social infrastructure of diverse intellectual property protection and protection of scientists, engineers and inventors. The experience of developed economies confirms that intellectual activity, innovation, creativity and technical decisions largely determine the strategy and tactics of rapid and comprehensive development, the high technical level of production, the integration of scientific, technological component industry.

Therefore, in this paper the issue of obtaining civil protection of industrial designs in Ukraine. The author analyzes the basic principles, current legislation by which regulates the legal protection of industrial designs in Ukraine and studied the views of various domestic and foreign scholars.

Focused attention on the problematic issues that arise when you get a design patent. These issues provoke a more significant problems during the implementation of the rights of owners of the industrial design. One of these problems is the registration of an existing industrial design with a change of only one significant feature.

Analyzed the criteria of patentability industrial design. The author concludes that one criterion of "novelty" is not enough. It is therefore necessary to introduce another criterion – originality.

This indicates that you need to create a comprehensive, high-quality and enhanced protection of industrial design through appropriate amendments to the laws of the country, including the Law of Ukraine "On the Protection of Industrial Design".

UDC 347.77

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HISTORIOGRAPHY INVENTION AND HIS CIVIL LAW PROTECTION

This article discusses the evolution of such intellectual property rights as inventions, as well as the development and establishment of the system of legal protection. The author investigates and analyzes the chronology of various inventions of mankind, from prehistoric to modern.

Thus, the purpose of the article is to analyze how the first inventions in the history of mankind, as well as rules aimed at their protection and conservation. All this allows us to argue the need to pay greater attention to the issues of inventions today.

The author draws attention to the lack of funding Patent direction from the state Ukraine, as well as its poor promotion, which has a number of negative economic and social consequences. Substantiates the idea that the proper media coverage of the process of invention creates the necessary prerequisites for the development of patent activity and the inflow of foreign investments that are needed Ukraine.

As evidence, the author gives a generalized description of such results of intellectual activity as fire, stone ax, wheel, boat, guns for hunting, war, and everyday life. Describes the geography of their creation. Based on a comprehensive analysis highlights the historical forms of legal protection of data objects. The tendency of its formation and development, ranging from the rule of law in the customs of antiquity, the Middle Ages state laws and ending with the world system of patent law that exists in our time.

Based on the study of sources of law Kyivan Rus period, it was found that the first written by the patents are “charters” princes who were given the monasteries and nobility. Also highlights the history of the patent laws of the European countries.

Furthermore, the author gives examples of the first attempts at classifying different modes of production of goods in China, as well as the first cases of industrial espionage. The study also draws attention to other cases of improper protection of patent law, which leads to lengthy discussions on the copyright to them.

Thus, the article summarizes new material investigated subject. It will be interesting from the point of view of history, as well as other areas: sociology, law, economics, and so on. And also, on the basis of the material forming the basis for the further development of ideas history of invention in terms of the psychological approach.

UDC 349.41

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LEGAL ASPECTS OF AGRICULTURAL CONSULTATIVE SERVICE

A study of modern state and foreign experience of the legal adjusting of agricultural consultative service has been done in the article.

There are two kinds of agricultural producers: big producers and small (medium) producers. Small (medium) producers have to be supported by the government.

The current way to support them is nongovernmental agricultural consultative services. They do not work properly unfortunately. There is no the system of such services. They work temporarily due to special programs 'money.

The experience of other countries how to improve agricultural consultative service has been studied. Agricultural consultative services exist in different ways. The state consultative services act in Romania and have good results. That is why it is worth to adopt Romania's practice.

There are propositions how to improve the legal adjusting of agricultural consultative service. It is expedient to organize government consultative service as central executive body on the base of nongovernmental consultative services.

The function of state consultative service has to be included in Law of Ukraine "About agricultural consultative activity". It can function next to present nongovernmental consultative services or be created on their base. With the aim to proclaim the legal status of state consultative service Decree of President of Ukraine "About the state consultative service" must be accepted.

State consultative service will be submitted to the Ministry of agrarian politics and food of Ukraine. It will function on central and local levels. Central state consultative service will function at central level. On local, there are regional and district state consultative service. As powers of central state consultative service can be taken: common guidance of the system of state consultative service in Ukraine, co-ordination of relations among agricultural producers, scientific and educational establishments. Realization of practical activity – giving the consultations, realization of seminars, trainings, and publishing activity can become the competence of local consultative services. These kinds of services will be free of charge for small (medium) agricultural producers.

UDC 349.422.22

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AGRICULTURAL PROCESSING COOPERATIVES AS SUBJECTS OF AGRARIAN RECEIPTS: LEGAL ISSUES

In this article author analyzed the features of legal status of agricultural processing cooperatives as subjects of agrarian receipts in accordance with existing legislation. The necessity of researching of the specifics of a given subject is dictated by non-profit status and production nature of agricultural processing cooperatives. The legal mechanism of agrarian receipts is only at the stage of introduction into circulation in Ukraine, which requires deeper attention to the legal regulation of subjects of these relationships.

Author, based on research, makes a conclusion regarding the impossibility of agricultural processing cooperatives act as a debtor for agrarian receipts. Such position is explained by the complex arguments arising from special legislation. Thus, agrarian receipts can be issued to persons, which have a land plot to make agricultural production. The agricultural processing cooperatives do not correspond this condition. Also agrarian receipts are provided to persons as the security for future harvest, that does not correspond to the types of activity of the agricultural processing cooperatives, and that's why it excludes their ability to be a debtor.

Author proved the existence of the right of agricultural processing cooperative to get agrarian receipts as from its members as from third parties, so it can act as the creditor. This conclusion is proved by a several legal grounds.

First, the creditor's status for agrarian receipts does not contain the legal restrictions. Second, the agricultural processing cooperative has the right to deliver cash or deliver the goods to third parties, but is illegal to provide services or execute works to third parties, who are not members of the cooperative.

Author make a conclusion about the possibility of processing agricultural cooperative receive both commodity and financial agricultural receipts. Due to the fact that agricultural processing cooperative using the mechanism of agrarian receipts may acquire ownership of agricultural produces of persons, who are not members of the cooperative, author considers it appropriate to regulate the maximum amount of such involved agricultural produce at 20 percent of total agricultural feedstock.

The legal mechanism of commodity agrarian receipts in some aspects reminds industrial and economic relationships that develop in agricultural processing cooperatives, but agricultural produce, supplied by the debtor for agrarian receipts, becomes the property of the creditor. In the agricultural processing cooperative ownership transition as a general rule does not occur.

Membership obligations, settled on the basis of internal local normative acts, and contract about economic participation different from obligations as agrarian receipts and therefore performed independently.

UDC 349.6

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ADAPTATION OF ECOLOGY LAW OF UKRAINE FOR EUROPEAN UNION ENVIRONMENTAL LAW

Scientific article is devoted for research of certain aspects of Ecological Law of Ukraine development, in particular its codification and adaptation for European Union Environmental Law. On the basis of the comparative-legal analysis of EU state-members experience is substantiated appropriateness of ecological code of Ukraine adoption.

Such features of modern Ecological Law of Ukraine as its relatively young age, high level of development intensity, big quantity and difference of legal acts are determined long termed scientific discussions regards its further possible path of development and improvement.

EU policy and legal acts adopted with the purpose of it implementation are important factors of influence for the development of Ukrainian national legislation with regard to international obligations of Ukraine on adaptation its national legislation to acquis communautaire.

The purpose of this article is to determine the most optimal way of adaptation Ecological legislation of Ukraine for acquis communautaire taking into consideration experience of EU states-members.

It is stated in article that law of EU is an important factor of influence for the development of national environmental protection law of EU states-members. For this reason author put special attention for discovering experience of particular countries in this area.

It was found out that as the result of scientific discussions in Europe Ecological Codes were adopted in a line of countries, including Sweden, France and Italy. Experience of these countries on codification their ecological legislation is analyzed in article.

Examined experience of particular European countries, which are members of EU, in the sphere of improvement environmental legislation shows reasonability of simultaneous codification ecological legislation of Ukraine and its adaptation for acquis communautaire.

UDC 349.41

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LAND FOR GREEN AREAS IN SETTLEMENTS AS AN OBJECT OF LEGAL RELATIONS

Peer-reviewed article is devoted to the problem of determining the legal regime of land on which there are green spaces in towns, as object relations.

The paper analyzes current legislation that regulates relations concerning land settlements by greenery. The author analyzes the features of land on which there are green spaces in towns, as an object of legal relations, the research elements of their legal regime found terminological inaccuracies and gaps existing legislation regulating this issue, the analysis of the ratio of legal structures “earth green zones “,” land of green spaces in cities and other human settlements “and” green area “isolated constitutive features green areas as separate states.

The author analyzed the correlation between “green space” and the “green zone”, expressed the statement that green space is an element of green areas. The approaches to value land and vegetation

located on it (the concept of independence of each of the objects, the concept of a single object and concept two resource single object).

Reasonably appears to be expressed by the author of the idea of identity concepts a land of green areas and green areas, as both the first and second terms indicate the relevant area with a combination of appropriate vegetation.

The author studied the current legislation on classification of green areas to a category of land. Thus, the author justifies the conclusion that at present possible classification of such land as a residential and public buildings and lands to recreational use.

The foregoing leads to the conclusion that the article is peer-reviewed scientific in nature, there is novelty and may be recommended for publication in scientific journals.

UDK 343.341

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THE INTERNATIONAL AGREEMENTS AS A SOURCE OF CRIMINAL LAW

Presently, in the conditions of globalization, development of Ukraine as legal state, to the international democratic association there is a requirement her integration in rethinking of fundamental principles of the home legal system, in particular in a criminal law that must become the instrument of guard both on national and out national levels. In this aspect an important place occupies providing of accordance of positions of criminal law to principles and norms of international law, concordance of positions with the elements of the international normative system.

The problem or should be attributed to sources of criminal law international treaties concerned P. Andrushko, M. Bazhanova, V. Borisova, A. Bronevutska, O. Boytsova, V. Vdovin, V. Gatselyuka, O. Dudorov, M. Durmanov, A. Zhalinskiy, O. Zutnuy, O. Kibalnuk, V. Klimenko, M. Kovalev, M. Kolos, S. Lyhova, V. Navrotskuy, O. Natalich, N. Pronyuk, A. Savchenko, V. Taciy, V.Tykhuy, T. Tertychenko, M. Khavronyuk, D. Khoroshkovska, S. Shapchenko, S. Shevchuk and others. However, the problem of the recognition of the international treaty as a source of criminal law and is left open.

Indicated that sources of criminal law isn't the acts (documents) and the relevant legal position. Kolos M. said that the sources of criminal law understands the system of internal national criminal laws and international legal acts containing norms of criminal law. According to V. Klimenko, the sources of criminal law is the Criminal Code 2001, the international legal acts ratified gave Verkhovna Rada of Ukraine, the Constitution of Ukraine and, in accordance with Art. 152 of the Constitution of Ukraine, the decision of the Constitutional Court of Ukraine on the unconstitutionality of criminal laws. In Soviet doctrine of criminal law was noted that the only source of criminal law is criminal law and there was no hint of another type forms of law (M. Durmanov, M. Kovalev).

According to Art. 2 of the Law of Ukraine "About international agreements of Ukraine", "Ukraine international treaty – concluded in writing with a foreign state or other subject of international law, which is governed by international law, whether the contract contains one or more interconnected instruments and whatever its particular designation (treaty, agreement, convention, pact, protocol, etc.)".

It notes that not enough to believe that only the Criminal Code regulates the criminal responsibility, but also other laws and regulations by regulations. It is noted that international treaties are a special source of criminal law, because at this stage the usual practice not only national crime but transnational (T. Tertychenko).

However, this possibility isn't ruled on the scope of public relations governed by the general part of criminal law. It is in such cases, the international treaties can be part of the national criminal legislation of Ukraine. In the sphere of relations governed by special part of criminal law, the international treaties are only advisory in nature for their application. In addition, the international law relating to the issues of struggle with certain dangerous act is usually discretionary rules. Often they

are advisory in nature, especially when it comes to legal liability. Some international conventions rightly notes that the State party may address these issues subject to national legislation.

Consequently, it must be concluded that international treaties are a source of law, including criminal law. They specify the initial rules and principles that are the basis of the existence of the legal system of any country in the world. Without proper implementation and observance of international instruments isn't possible to achieve appropriate goals, including the rights and freedoms, reduction and crime prevention practice and generalization develop effective methods to combat them.

UDC 343.15

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PARTICIPATING OF PUBLIC PROSECUTOR IN THE REVISION OF COURT DECISIONS ON CRIMINAL PROCEEDINGS IN JUVENILE CASES

"As not a process was perfect, what it would not be provided by the guarantees of justice pronouncing by the judges of decisions, but also on a court, but as in every human activity errors are possible"
M. Davydov

In accordance with part 1 article 370 and part 1 article 410 the Criminal procedure code of Ukraine (farther is CPC of Ukraine) a court decision must be legal, reasonable, explained and just. At the same time the normative fixing of these requirements, their embodiment does not guarantee to a full degree in practice, does not eliminate possibility of judicial errors. The most widespread in the modern world rule-making method of correction of such errors is an appeal of any court decision in the court highest – appellate or cassation.

Providing of appellate and cassation appeal of decisions of court is one of basic principles of rule-making in accordance with item 8 part 3 article 129 Constitutions of Ukraine. This position found the reflection and in an article 14 Law of Ukraine "On the judicial system and status of judges".

The range of problems of revision of court decisions always attracted attention home and foreign scientists, such as: B. Bardamov, T. Varflomeeva, I. Vernidubov, Y. Groshevoj, M. Davydov, V. Malyarenko, O. Mikhaylenko, M. Mikheenko, V. Maryniv, G. Omelyanenko, M. Seroj, O. Sukhova, V. Teremetsky, I. Foinitskiy, O. Shilo.

The right to judicial review of scientific studies is seen as an integral component of the right to defense. In addition, as rightly pointed out by V. Maryniv marked position is an international standard as to guarantee a fair trial is impossible without ensuring the right of the person concerned on its test different composition of the court. So, according to Art. 2 of Protocol number 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms and item 5, Art. 15 of the International Covenant on Civil and Political Rights, everyone convicted of a crime has the right to have his case reviewed by a higher court .

Despite the breadth and significance of existing research on the review of judicial decisions, they have neglected the problems of implementing powers of the Prosecutor on the appeal of court decisions.

At the same time, the prosecutor is one of the main participants in the judicial implementation. On the progress and results of its operations depends, or will be achieved by setting the criminal

implementation provided for in Art. 2 CPC of Ukraine, including, in particular, to ensure that everyone who has committed a criminal offense has been prosecuted to the extent of his guilt, and not a single innocent person is charged or convicted.

In accordance with Art. 9 CPC of Ukraine, art. 34 of the Law of Ukraine "On the Prosecutor's Office", the prosecutor is obliged constantly to restrain the legal provisions and ensure that legitimate and impartial judicial decisions in criminal cases, including juvenile cases. To this end prosecutor legally guaranteed right to a review of court decisions that affect the rights, freedoms and interests of the person, the court, the highest level in the manner prescribed by the CPC of Ukraine (part 2 Art. 24, item 20 part 2 Art. 36 CPC of Ukraine).

The purpose of this article is to clarify the problematic issues related to the participation of the prosecutor in the revision of judgments in criminal procedure concerning minors, based on analysis of the practice of examination by courts of appeal and cassation instances of such cases.

In accordance with item 6 part 1 Art. 393, item 3 part 3 and item 2 part 4 Art. 394 CPC of Ukraine the prosecutor is conferred the right appeal of court decisions in the appellate order in the terms envisaged in an item 395 this Code. By positions Art.424 and item 6 part 1 Art. 425 CPC of Ukraine a public prosecutor is also authorized to appeal court decisions in the cassation order in the terms envisaged by a Art. 426 this Code.

According to law the content of the appeal judgment based on an agreement on the recognition of guilt is limited. In addition, the CPC of Ukraine is no indication of an appeal by the prosecutor sentence imposed under an agreement concluded by unauthorized entities. The above is of particular relevance for juveniles. After the settlement or acknowledgment of guilt to achieve minor '16 authorized to enter only his legal representative , and after reaching a specified age – minor alone, but with the consent of his legal representative.

Conducted in article analyzes the practice trial criminal proceedings against juveniles at the appeal court decisions reveals that that the impact of the implementation prosecutor powers in this area provided quality training appellate or cassation, based on a comprehensive and systematic monitoring judgments and decisions rendered in criminal proceedings and similar placed in the Unified State Register of judgments.

UDC 343.8

Olena Tkachyova, *Candidate of Sciences (Law), Associate Professor of the Yaroslav Mudry National Law University*

SECURITY OF PENAL INSTITUTIONS PERSONNEL AS THE ELEMENT OF IMPRISONMENT REGIME

As we can see from the content of Art. 102 of the Penal Code of Ukraine, established by law and other legal acts, the order of execution of punishment (mode in penal and correctional facilities) should provide security of personnel. This is quite natural, since any social activity, including the criminal sentence execution, involves different nature risks which threaten life and health of persons who are engaged in the implementation of certain programs, objectives, statutory powers and so on. Therefore, the safety of workers of the State Penal Service serves as one of the main operational requirements for execution of criminal penalties.

Nevertheless, the problem of security of corrective colonies' personnel has been hardly studied in the doctrine of penal law. Some aspects of security personnel have been studied by domestic and foreign scholars, while specifically and separately the personnel security in correctional facilities in monographs and dissertations were not considered. This justifies the need for more detailed study of security in prisons.

The author examined the current state of scientific research the problems of security implementation in penitentiary institutions. The author analyzed the scientific heritage of top scientists in the field of penal law on these issues. Attention has focused on the definition of personnel

safety in the penal institutions. The author proposes a definition of safety of the personnel corrective colonies – the state of protection of vital interests of employees from internal and external threats, and proves that the problem of safety of the personnel corrective colonies is a comprehensive question. It is not only confined to protection from criminal encroachments by prisoners, and includes protection for those persons, working in institutions from the effects of dangerous industrial, medical and other adverse factors which are intensified in places of confinement. The main means of personal security personnel State Penal Service include: a) the use of security tools to prisoners; b) supervision of their behavior; c) strictly regulated internal rules in places of confinement; d) the prevention of crime and other offenses in the colonies; e) the technical means for security in penal institutions.

Besides the major functions of security in penal institutions are: detection and prediction of internal and external threats to the vital interests of employees of the State Penal Service, the implementation of the complex of operational and long-term measures for their prevention and neutralization; creating and maintaining the alert forces and security arrangements; control forces and security arrangements in everyday circumstances and in emergencies; implementation of measures to restore the normal functioning of safety in units affected by mass disturbances and other emergencies; participation in the activities of security staff outside the penal institutions; introduction of the system of effective social and legal protection of the personnel.

UDC 343.21

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INTEREST AS AN OBJECT OF CRIMINAL LAW CONFLICT

Because crime is the result of criminal conflict behavior, its features can be used to characterize the criminal conflict, at least as regards the criminal side. The culmination of the conflict is a criminal act as conscious volitional behavior (action) of the crime (physical sane person who at the time of its commission reached the age of criminal responsibility), which is directly aimed at causing some adverse effects. Acts to be guilty (committed intentionally or negligently), illegal (his punishment and other penal consequences are clearly defined in the criminal law) and offense (subject to criminal punishment). Social danger of the act is that it is a consequence of the injury (or a real risk of injury) damages relationships, protected by criminal law.

Generally agreeing with this position, it should be noted that for a comprehensive analysis of the legal nature of criminal law conflict, this is not enough. After analyzing the traditional model of crime is not enough consider the nature of interpersonal interaction between the offender and the victim, who happens to commit a crime (at earlier stages official activity). That's why we offer the study of criminal law conflict as a systemic phenomenon, which among other things provides for separation of elements as its object – the objective side, the subject – the subjective side.

In fact, even those researchers – lawyers who strongly insist on the need to exclude from criminal jurisprudence doctrine of the crime, to some extent, confirm the correctness of the chosen vision. After turning to reality, it is easy to see that the elements used for the legal analysis of the crime, characterized not only by criminal law. They are part of any purposeful human activity. Since that did not make the person always be an object (something that its tendency), objective (external), subjective (inner) side of its operations and its subject (man).

In the centuries. 1 CC of Ukraine legislator, revealing the content of the tasks of the Criminal Code of Ukraine, it defines objects protected by the criminal law protection – rights and freedoms of man and citizen, property, public order and public safety, the environment, the constitutional order of Ukraine, peace and security of mankind and so on. However, in our opinion, it is not necessary to identify such things as the object of the offense and the object of criminal law conflict as well as to analyze the latter is best suited not the traditional concept of "object of the crime – public relations",

which is now prevailing in the domestic criminal law doctrine, but rather "the object of attack – interests." The latter concept is to determine the orientation of the criminal law conflict and its subject.

The starting position for this are, first, the fact that the core of any conflict (including criminal law) an interest or an interest group to which infringes crime. That is, in fact a crime against social relations, and in the past are based on different interests. And because of opposite interests of the offender and the victim is necessary, using the criminal law to protect relevant public relations from criminal attacks.

UDC 343.82:343.26(17.026.4)

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RESPECT FOR CONVICT'S DIGNITY AS A CONSTITUENT PRINCIPLE OF RESPECT FOR HUMAN RIGHTS AND FREEDOMS IN THE CRIMINAL AND EXECUTIVE LAWS AND DURING DISCHARGE OF THE TERM OF THE SENTENCE

The Article studies respect for convict's dignity. It is observed that human dignity is a constituent principle of respect for human rights and freedoms in the Criminal and Executive Laws and during discharge of the term of the sentence, which indivisibly covers all convicts regardless of their sex, citizenship, nationality, proprietary and social position, term and type of sentence. The Article mentions that the person's rights for respect for his/her dignity was studied by human rights lawyers and scholars in different sciences, such as philosophy, sociology, ethics, state and rights theory, and in different branches of law, such as constitutional law, criminal procedure, including the criminal and executive law. It is noted that the national legislation of Ukraine has no explicit definition of the term "human dignity", which results in its ambiguous and unjustifiably narrow interpretation. Definition of the term "human dignity" and interpretation of its contents has a great importance not only for the science of the criminal and executive law, but also for the rights application activities.

The Article offers to solve the mentioned scientific problem by further improvement of the existing legislation, as this imposes a duty on the management and staff of the penitentiary facilities to act exclusively on basis and within the limits of their authority provided by the Constitution and the Criminal and Executive Law. It is pointed out that this will protect the rights of every convict in an even greater extent and will guarantee the convicts against humiliation and unhuman attitude.

The Article analyses the criminal and executive law and the international standards for convict treatment which hold the rights of the convicts for respect for their dignity. It is noted that applying force in law the management and staff of the penitentiary facilities must steadily observe the Constitution of Ukraine, criminal and executive law, other international human rights protection documents, and the international rules on convict treatment that define the boundaries and guarantee the convicts respect for their dignity.

The Article holds scientists' views on the "human dignity" definition. It offers author's definitions of the terms "human dignity" and "respect for convict's dignity". The author regards the respect to convict's dignity as a prohibition of tortures, cruel, unhuman and humiliating attitude, use of punishments of cruel and unhuman nature, medical, scientific and other studies of a person without his/her free consent. Solving of this theoretical problem will represent a universal protection of the convict's dignity during his term and will define the boundaries of the management's and staff's authority.

UDC 343.82:343.26(17.026.4)

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CRIMINAL LAW REGULATION CONDITIONAL KINDS OF LIBERATION OF MINORS FROM PUNISHMENT AND SERVING IT IN THE POST-SOVIET COUNTRIES

The article states that the punishment of minors is to some extent independent content-regulatory system of criminal punishment. The objects of its actions are the categories of citizens of a country whose specificity is determined by age and singled out their identity.

The need for a separate legal approach to the consideration of the case of offenses committed by minors, recognized worldwide, as evidenced by the existence of separate sources of juvenile criminal law. This separateness caused imperative "punish" juvenile offenders mainly through preventive interventions aimed at keeping a minor of offenses and crimes in the future.

The article is devoted to the peculiarities of legal regulation of conventional types of exemption from punishment of juvenile and his serving in post-Soviet countries.

Examined and analyzed key terms related to the use of conventional types of juvenile impunity and its serving.

The main idea that the main purpose of punishment – a general, special prevention and correction of a prisoner, because after the negative assessment of juvenile criminal action, provided that it first gave offense small or moderate to sentencing or while serving his proved its correction may be released from punishment by the court, his serving or serve out.

The author concludes that almost all states studied show a privileged relation to specific categories of business crime – minors. However, none of the countries do not provide in criminal law release on probation. Although, it is noted that some of the conditions laid down in Articles that provide for exemption from punishment using educational measures and parole with oriental features with conditions that imposed on juvenile released on probation in Ukraine, for example, the right court put a separate person, with its consent or at its request, the duty of supervising the inmates and conducting educational work with him or installation probation to a minor.

UDC 343.272. (477)

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THE HARMONIZATION OF CRIMINAL LAW PROTECTION AGAINST ILLEGAL MIGRATION IN THE NORMS OF THE CRIMINAL CODE OF UKRAINE WITH UKRAINE'S INTERNATIONAL OBLIGATIONS IN THE FIELD OF FREEDOM OF MOVEMENT

As regards the protection of states from illegal migration interaction states at the international level is multifaceted and includes a definition of the distinction between general principles of legal migration of illegal and the formation of a unified national law, including the law on criminal liability in this area. The importance of this interaction is due to increased social danger of such crimes.

With regard to international obligations in this area, the main international treaties on prevention of illegal migration is the United Nations Convention against Transnational Organized Crime (hereinafter – the UN Convention) and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention.

International agreements depending on the amount taken by States of obligations in the field of criminal law may impose obligations to criminalize certain acts or to establish a form of punishment for certain acts deemed criminal. UN Convention and Protocol is an example of an international treaty, which established a commitment regarding the criminalization of certain acts, as well as on the need to establish a form of punishment for their commission (it is a requirement for the establishment of mechanisms for the confiscation of property).

After analyzing the articles of the Criminal Code of Ukraine (CC) regarding the incorporation of international obligations in establishing criminal liability for illegal migration believe that differentiation conduct criminal liability for illegal conveyance across the state border to exploit workers in the art. 332 CC of Ukraine is impractical due to the fact that these actions are subject to qualification under Art. 149 of the CC of Ukraine, in a footnote which defines the notion of "exploitation". Thus, if appropriate, subject to the following qualifications for multiple offenses (Art. 149, 332 of the CC of Ukraine). Instead, it is advisable to consider when differentiating criminal liability for illegal migration such circumstances as inhuman or degrading treatment of migrants, because that individual qualification under other articles of the CC of Ukraine did not receive (for example, if the target behavior falls under the signs of Art. 126 of the CC of Ukraine this article is classified as private prosecution cases that are not initiated, following a complaint from the victim, article 127 of the CC of Ukraine provides for mandatory goal that can not be set for qualification under Art. 332 of the CC of Ukraine). Thus, in order to harmonize Art. 332 CC of Ukraine with the requirements of the Protocol is a need to supplement this article so qualified by as inhuman or degrading treatment of migrants.

Note that the UN Convention provides for the establishment of national law the conditions for confiscation of property which, including transferred to third parties and not owned by the convicted person. Based on these extra sentences in p. 3. 332 CC of Ukraine in the form of confiscation of property of the convicted person does not fully ensure compliance with Art. 12 UN Convention. For the same reason can not be found to be effective sanctions set out in p. 3. 332, p. 3. 332-1 CC of Ukraine kinds of special confiscation, such as confiscation of vehicles.

So, in order to harmonize criminal liability for illegal migration to the international obligations of the state is necessary to amend Art. 332 of the CC of Ukraine and to supplement it as qualified by as inhuman or degrading treatment of migrants; exclude from sanctions p. 3. 332 and p. 3. 332-1 CC of Ukraine instructed to confiscate vehicles and extend the application of special confiscation of those offenses.

In addition, during the criminal legal qualifications by Art. 332, 332-1 of the CC of Ukraine should take into account the practice of the ECHR, which is formed upon consideration of cases this international court under the Protocol number 4 to the European Convention on Human Rights.

UDC 343.914

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EUROPEAN DOCTRINE OF THE RELUCTANCE FEMININE VIOLENCE

The article analyzes the experience of foreign countries in countering violent crimes committed by persons of the female sex. The focus is on the most effective foreign developments that are aimed at combating violence that has proved in practice its effectiveness. Indicated on the expediency of borrowing the positive experience of other countries and the achievement of a certain level of harmonization of Ukrainian legislation with the legal norms of the EU, as this is a key element in the success of Ukraine's European integration.

It is noted that in the last decade in research criminologists tendency to the growth of aggressive and violent crimes committed by women, particularly in the domestic sphere.

Comparative criminological research on the status of women's crime, theories determinants, experience counter, are relevant. This is due to the fact that in recent years around the world there is a tendency to increase the level of crime among women, including underage girls. In addition, Ukraine is seeking to become a full member of the European Union, therefore, a key element in the success of Ukraine's European integration is the achievement of a certain level of harmonization of Ukrainian legislation with the legal norms of the EU.

According to scientists, today in Ukraine there is no approved at the state level, the concept of crime, due to many economic, social, political, legal and other features and contradictions of the development of market relations in the country: not completed the creation of the criminal justice system; ongoing police reform; continuing the development of national legislation; introduced state institutions that must comply with the best European and world standards in the field of public relations.

Specifies that States are obliged to recognize, protect and respect human rights and to take all measures to prevent, investigate and punish all forms of violence, including violence in the family.

In addition, legal reform can not occur without "reform" of the legal culture of citizens, which means approval of the will and consciousness with natural laws.

It is therefore important to counter violent crime is the formation of educated people's understanding of the concept of "life", its uniqueness, value, and importance to every individual, relationship to their own lives and the lives of others, as the highest social values.

The approximation of legislation of Ukraine with modern European legal system will ensure the development of the political, social, cultural activity of citizens of Ukraine.

The European doctrine of anti-female violence is a long and complicated path of society in meaningful relationship to the offender, it is the state's ability to develop an effective policy to counter the negative consequences of female crime.

It is safe to say that it is a necessity for Ukraine, which aspires to become a full member of the European Union.

UDC 347.962 (477)

Oleksandr Potylchak, *judge of the Trial chamber on commercial cases of the Supreme Court of Ukraine*

THE ESTABLISHMENT OF JUDICIAL SELF-GOVERNMENT IN UKRAINE: THE EXPERIENCE OF FOREIGN COUNTRIES IN UKRAINE

A legal regulation of providing a maintenance of professional judges status in a contemporary European state depends not only on historical traditions, form of government, state and political regime, but also is under an influence and transformation within a framework of general international law actions under the aegis of Council of Europe (CE) structures, nongovernmental agencies, which have been keeping an implementation of coproduced standards in a sphere of judiciary and status of professional judges. In that context Ukraine membership in CE provides undertakings, including a sphere of maintenance European generally accepted standards.

Native Ukrainian researchers of judicial self-governance institute rightly underline the artificiality of variety organizational forms of judicial self-governance from one side, and the absence of a real influence on processes of the judiciary organization, punishment administration, career progression of judges, from the other side.

Expert groups of EC representatives also take a dim view of provided Ukrainian model of judicial self-governance. The Venice Commission underlined at the time that the Law of Ukraine "On Judicature and Judges Status" forms a very complicated basis of judicial self-governance organization system. It is observed that some similar or even identical functions were relegated to empowerment of simultaneously three authorities – judicial assembly, judicial conference and judicial council.

Investigating a problematics of discussed question we come to a conclusion that legal registration of judicial self-governance national models in most European states differ according to their structure, authority names and their functions. At the same time, it is available to divide all existing models of judicial self-governance in member states of EC by criterion of existence in national governance systems the institute of an authorized body, independent of the legislative and executive branches of government, minimum a half members of which are the judges, elected by other judges according to determinate order on the basis of principles that guarantee the highest possible representation of judicial branch of government. Legal registration of native judicial self-governance model is characterized by collision of statutory regulation; the existing model must be subsumed to the second type (according to criterion of absence an independent authority – Supreme Soviet of Justice), given that the amendments of 2014 to the Law of Ukraine "On Supreme Soviet of Justice" have made it dependent on relevant parliamentary committee (that is why, it is necessary to have a pre-approval of soviet decision given by the committee).

UDC 343.211

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THE DEFINITION OF THE PRINCIPLES OF CRIMINAL LAW

The current stage of development of Ukrainian society determines the urgent need for a review of current ideas about the current legal principles. Taken society Ukraine policy of building a European, democratic and rule of law requires not only a critical analysis of existing scientific approaches in various fields of jurisprudence, but also a modern system based on principles reflect the specificities of each area of law.

Important is to ascertain the nature of the fundamental principles of law in the context of modern thinking and discovering their normative content. The principles of law are the subject of research professionals primarily from the general theory of law, while science – civil, civil procedure, labor, criminal, criminal procedure, international law and other areas of law.

The disadvantage of the current legislation Ukraine, which is the legal basis for combating crime is that lawmakers did not pay attention to the principles of the industry, taking the Criminal Code of Ukraine in 2001. However, in making the Criminal Procedure Code of Ukraine clearly defined not only species but also the content industry guidelines. Thus, in ch. 1, Art. 7 Code of Ukraine established non-exhaustive list of such principles, the rule of law, rule of law, equality before the law and the courts, secret communication, optionality, presumption of innocence and providing proof of guilt, the ban twice attract criminal liability for one and the same offense more. However, sending justice, the court must be based on principles of law – to justify their decisions directly referring to them.

Obviously, the concept of "principles of criminal law" primarily due to understanding the concept of law principles in the theory of law. There there are many definitions, but because the perception of a certain scientific approach to design will test the concept in criminal law.

Principles is the category which is inherent in the system, generalized, universal and fundamental. Based on a systematic approach and adhering concept of natural law can thus define the concept of "principles of criminal law" – a system derived from the principles of human nature embodied in criminal law that reflect the content, objectives and patterns of legal regulation of relations in society.

Themselves principles of law can not exercise regulatory control criminal relationships, as in this case, the rules and principles of criminal law will perform the same functions, and this will inevitably lead to negative consequences, such as the substitution of one concept to others. Principles of Criminal Law of Ukraine should be the basis of a reliable basis for the legislative process of creating a coherent system of regulatory and enforcement of criminal law that is able to protect the criminal

law of chaos and contradictions. The legislator, creating a rule should be guided by certain criminal law principles. In law enforcement practice principles of criminal law should take into account the direct implementation of its provisions. Principles of Criminal Law of Ukraine should be the basis of a reliable basis for the legislative process of creating a coherent system of regulatory and enforcement of criminal law that is able to protect the criminal law of chaos and contradictions.

UDC 343.2

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CRIMINOLOGICAL CHARACTERISTICS OF PERSONALITY OF THE CRIMINAL, MALICIOUSLY NOT PERFORM HIS DUTIES CHILD CARE

In the article the criminological study of offender who has committed a willful failure to perform its obligations under the care of the child or the person against whom the custody or guardian ship. Analysis of the various scientific approaches on this issue, the study of statistics, gave an opportunity to high light the socio-demographic, psychological and penal signs of offender, who has committed will full failure to perform its obligations under the care of a child or a person against whom the custody or guardian ship and make his criminological portrait.

Through the study it became possible to create a portrait of criminological person acting maliciously is not child care or the person in respect of whom guardianship or trusteeship.

In most cases it is the woman – the mother of the child, a citizen of Ukraine, at the age of 30 to 40 years old, not married, no previous convictions, which commits an offense for the first time on its own, is not engaged in socially useful work, has completed secondary education, never worked, has a very low level of material security.

Persons who commit this type of crime are an antisocial lifestyle, are prone to systematic abuse of alcohol, drugs less frequently, which, of course, leads in the first place, to the disruption of the normal functioning of the family, the destruction of valuable family ties and, consequently, the appropriate environment in which the child should be developed.

In the context of alcoholism and drug addiction personality degrades, its interaction with the "prosperous" sectors of society is changing to communicate with informal groups of comrades a glass, drug addicts, the presence of which is often accompanied by a dismissive attitude of the parents to the child at his place of residence.

From a psychological point of view is characterized by a low level of intelligence in the value orientations dominate individual selfish beliefs, attitudes that determine a negative attitude towards their own family, children, commitment to a parasitic existence at the expense of others, especially her own child, neglect of man in general and to the child in particular.

The clear advantage of biological material over the spiritual needs. Are also characterized by a reduced emotional stability, excessive impulsivity, aggression; inherent character traits such as lying, rudeness, cynicism, inflated self-esteem; have a low level of culture, the primitiveness of interests and values, the absence of proof of life plans.

UDC 343.237

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METHODS OF PHYSICAL AND INTELLECTUAL COMPLICITY

The studies, aimed to clarify the nature of participation in the commission of a crime in general and this type of accessory as accomplice, in particular, does not lose its relevance, despite the considerable number of works on this subject in the science of criminal law. So, are controversial issue of qualification of accomplice in the crime of special subject, and separating involvement in crime and aiding in the commission of a crime, separation action accomplice and agent of a crime. At the same time, the end is still unresolved question of expediency criminalization of certain types abettors' action in the Special Part of the Criminal Code of Ukraine.

Distinguishing physical and intellectual complicity is a traditional for science of criminal law, since these aspects analyzed as pre-revolutionary scientists, criminologists, and scholars of contemporary development of criminal law doctrine.

Along with the traditional division of the physical and intellectual aiding, the science of criminal law justified proposals for its division into three, the third of which is aiding-concealment, which is offered in advance attribute this promise to hide a criminal, gun, evidence of a crime or objects of crime . Despite the lack of appropriate differentiation in the norms of the Criminal Code, in aiding individuals traditionally offered to provide tools to understand or guns or remove obstacles crime. In turn intellectual complicity is to provide advice and guidance, as well as pre-rendered promise of harboring criminals, guns, drugs, traces of crime has been committed or items of crime, purchase or sale of items other assistance to conceal the crime.

The author took part in the scientific discussion on the question of whether action accomplice strengthen commitment of a crime. From the position that their actions do not accomplice strengthens commitment of a crime and it only contributes to the commission we agree only in part, namely the part that relates to what functions accomplice reduced to facilitate, promote, some assistance to the commission of the crime. However, we can not agree with the fact that the accomplice can not have any influence on the formation of the intention of the person as it is the role of instigator. First, the instigator may not be as intent to commit a crime may be the performer or other accessory alone, ie without external influence. Secondly, promoting the formation of intent to further facilitating the commission of a crime a person can connect with her two roles: the instigator and accomplice, and therefore, in our opinion, should avoid conclusions that would make it impossible combination. Thirdly, we can not completely exclude that certain actions accomplice can have influence on the formation of individual intent to commit a crime that is conceptually different from the effects which carries instigator. Yes, advice or guidance on the crime may establish a person intent to commit a crime, but under these conditions no reason to believe that such person bowed another person to commit a crime. Thus, in assessing the conduct accomplice, be aware that not every impact on the intent of the person is incitement.

As to the question of whether the wording exhaustive list of ways aiding in the criminal law concluded that the approach to the formulation of a definition of "accomplice" by using an exhaustive list of relevant action is enhanced by appropriate criminal law response to all acts variety of accomplices to the crime. Under these conditions, a person who performs an objective the promotion of a crime, in other words, makes it possible to commit, can escape criminal liability due to imperfections of the criminal law, as under Part. 3. 3 CC criminality and its punishment and other penal consequences determined only by this Code and therefore committing, aiding in a manner not prescribed ch. 5. 27 of the Criminal Code is not a crime.

UDC 343.431 (477)

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ON THE DEFINITION BANDITRY: A HISTORICAL PERSPECTIVE

It is considered a number of questions regarding the normative – legal definition of banditry at different historical stages. The attention is focused on raising the level of public danger of the phenomenon depending on changes in public life.

The paper states that banditry is closely connected with the revolutionary transformation of social relations, as a society, with its contradictions and flaws, imperfections, greed, violence and many other shortcomings, is poorly controlled by the state. It is perceived by some sections of society as infinity. To successfully counter this negative phenomenon should identify its determinants underlying the emergence, existence, change, extinction of the proposed social phenomenon.

The main idea that the study of various social phenomena in terms of their historical development has always been a subject of interest as criminologists and other scientific disciplines. This is no accident. After installation dialectical relation with reality past some of the negative effects makes it possible in the future not to repeat the mistakes more successfully counteract, in this case, banditry, as a social phenomenon caused by criminal.

The author argues that research available today are mostly fragmented excluding banditry variations at different stages of social development, interdependence and interdependence of these processes. These circumstances determine the relevance and appeal of scientific attention to the above defined problems.

Also focuses on the fact that since the collapse of the former Soviet Union and the changes taking place in the economy of Ukraine – the emergence of new forms of ownership – the disposition of articles were excluded guidance on public or community businesses and organizations.

Unemployment, lack of livelihood, moral decline, almost outright propaganda of violence and cruelty, club law, taunt against the person, his integrity and dignity, blatant impunity and enrichment, etc. – this is the reality of today. Gang – social phenomenon because it is a manifestation of social anomie society.

The country has developed a dangerous social and psychological phenomenon, when the consciousness of society some wrongful acts no longer perceived as a crime and considered a type of business, though dangerous, but quite profitable.

It is concluded that banditry in all historical periods recognized as one of the most dangerous criminal acts and its significant distribution inherent to society during instability in the socio-economic and political development.

UDC 347.795.3:341.225.5]:341.981

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LEGAL REGULATION OF THE JURISDICTION IN INTERNATIONAL MARITIME TRAFFIC

Ukraine has foreign economic relations with many countries. These links provide export and import cargo, most of which is provided by sea. Sea transport relations of international character are regulated by private international law of the sea – one of the components of the system of private international law. That is why the international law of the sea, on the one hand, has all the features inherent in private international law in general, and on the other, characterized by their standards, applicable and acceptable only here, rules, standards and features.

Problem jurisdiction disputes over maritime transport of cargo holds importance in international maritime private law. Disputes on jurisdiction – a special category of disputes arising in connection with the carriage of goods by sea and affect complex legal issues, one of which is the question of jurisdiction. The latter is characterized by a set of rights that should be realized in a particular court.

Aim of this paper is to study the regulation issue of jurisdiction and criteria for determination by comparing the legal provisions of international conventions governing international shipping.

In cases raised in connection with the carriage of goods is important whether transportation is carried out within the same state, or within two or more states. We are interested in international jurisdiction, that is, when the carriage of goods in the contract involving persons of different nationality. It disputes between the parties are subject to transportation solution judicial authorities of different countries. That's why, along with the conflict to establish tribal and territorial jurisdiction of a conflict even in international jurisdiction, also arises a problem of the competence of a dispute by a court of a State.

In such a way, jurisdiction, which is determined according to some agreements may differ from jurisdiction established on the basis of other criteria. And this is natural, because for such complex issues, as the jurisdiction has not yet found a single correct solution. However, it should be changed and modified certain provisions, adopting them to the realities of today. Participation of countries in the international treaty process will enable states to unify and bring legal regulation in line with the demands of time.

UDC 341.215.2

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RESPONSIBILITY UNDER INTERNATIONAL LAW OF THE INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS: CURRENT STATE AND PROSPECTS

Dynamism of modern international relations induces subjects of international law to involve international non-governmental organizations in their activity. In consequence of such international activity non-governmental organizations can inflict harm.

Cooperation among subjects of international law and non-governmental organizations is performed on agreement base. Such agreements don't provide effective regulation of non-governmental organizations responsibility. Activity of non-governmental organizations also regulates by codes of conduct. But such documents have not obligatory force. Remarkable is Council of Europe activity and some private institutions specialized on codification of international law in codification of norms and principles in recognition of legal personality and responsibility of international non-governmental organizations. But such documents haven't effect on international responsibility of such organizations.

In particular spheres of international law (for instance international atomic law) responsibility of international non-governmental organizations can be realized on grounds of international treaties through interstate courts.

In view of absence of necessary general regulation of aforementioned organizations responsibility under international law originated a problem of irresponsibility. Not least of all such picture connected with legal nature of international non-governmental organizations (such organizations established under interstate law, are not subjects of international law, have not international legal personality).

That's why in order to solve this problems some authors recommend through obtainment by international non-governmental organizations status of subjects of international law. Other lawyers set forth an idea to create an international structures and mechanisms or forced mechanisms to realize such responsibility. We acknowledge that theorists do not reached agreement of opinion on that question.

Taking into the consideration that question with international non-governmental organizations is open we propose finding the answer on it in following ways:

– international agreements on cooperation between certain subject of international law and international non-governmental organization should contain provisions on responsibility (with forms of responsibility) for the violation of stressed obligation by each party and reparations for harms in the issue of lawful activities;

– granting to international non-governmental organizations status of organs of the subjects involving non-governmental organizations in their activity afford an opportunity of avoidance irresponsibility therefore responsibility will shifted on such subjects.

Nowadays in anyway international non-governmental organizations are not obliged bear responsibility on international level because of absence general regulations in all spheres of it activities. Accordingly raised topic is relevant and be in need of subsequent development and scientific research.

UDC 341.018

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THE CONDITIONS OF EFFECTIVENESS OF UN SECURITY COUNCIL TARGETED INTERNATIONAL SANCTIONS

The article is devoted to the investigation of the conditions of effectiveness of Security Council targeted international sanctions imposed under Chapter VII of the UN Charter against countries violators of international law.

Both objective and subjective factors that influence the effectiveness of sanctions, were analyzed by the author. The conditions of efficacy of coercive measures such as legal, economic, political, natural and geographical, regional and global factors that have a direct or indirect positive or negative impact on the effectiveness of sanctions were investigated. For this purpose the Security Council resolutions, reports on the work of Sanctions Committees and reports of the Panels of Experts were studied.

Particular attention was paid to the legal conditions of efficiency of enforcement measures. The legal conditions of effectiveness of targeted sanctions, typical for the decision-making stage and conditions specific to the stage of implementation of UN Security Council resolutions have been described by the author. Such conditions as timeliness; adjusted; the possibility of correcting the sanctions regimes; informativity, unambiguousness of the resolutions text mandatory requirements; coordination of the activities of the Member States on the implementation of sanctions resolutions; proper implementation of resolution in the national legal systems of the states; continuous monitoring and analysis of the results of application of sanctions were especially studied.

Considering the results of the study the author concludes that to stop the violations of international law is impossible without improving the existing international mechanisms for the impact of the sanctions on violators. In order to achieve the efficiency and effectiveness of enforcement measures it is proposed ways of improvement of the UN Security Council sanctions.

Research results obtained by the author have both theoretical and practical importance, since they allow to assess the overall position of the UN Security Council for violations of international law rules, give evidence of the effectiveness of enforcement measures and achieve the purpose for which they were entered.

UDC 342.55

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THE ORGANIZATION OF PUBLIC AUTHORITIES IN THE CAPITAL CITIES OF EUROPEAN COUNTRIES

There was an attempt to build relations between public authorities and local governments because of the need of good governance in the capital city in every European country.

In the different European countries used different systems of local governance, the choice is influenced by such factors as: state regime, form of government, different approach to understanding the nature of the government, separation of administrative units in “natural” and “artificial” national and historical features and traditions. The basis of the local governance systems are the different principles of responsible local government relationships with each other and with the central authorities.

There are several main models of the European local governance systems: Anglo American (Anglo-Saxon), continental (French, Romano- Germanic or European), mixed and Iberian.

Some scholars have identified the Nordic model and that is common in the countries of the region (eg , Stockholm, Oslo) and in the Baltic States with their small territory and population (Tallinn, Vilnius). This model is characterized by weakening or absence of local government at the regional level, the majority of functions at this level is concentrated in public administration. There is widely developed the local government level (the community level) in the Nordic model.

Current state of regulation of local self-governments in developed European countries indicates that its organization is based on certain principles:

1) local governments are the foundation of a democratic social relations,

2) the principle of local self-government shall be recognized in national legislation and in its Basic Law – the Constitution.

The main ideas of the local self-government are defined in the two most important international legal instruments on government – in the Universal Declaration of Local Self-Government, adopted by the World Association of Local Government September 26, 1985 and the European Charter of Local Self-Government of 15 October 1985.

Modern European practice is shown considerable diversity of organizational legal forms of local self-government:

1) A strong Council – weak mayor,

2) A strong mayor – council,

3) Council – Manager,

4) Commission form.

Also, some scientists release "Combined form" that characterized by elements of the form "Council – manager" and the form "Strong mayor – council".

However, there has not found a combination of forms of "Strong mayor – council" and "Weak mayor – strong council" which could be defined as "strong mayor –strong council" in the law literature.

At the same time, there is not a "pure" model of local self-government in a European capital. In every European state the model of local self-government is modified by the historical legacy, current realities, traditions of state and the aims and prospects.

UDC 341.231.14;349.2-055.2-053.6]341.176(4)

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ACCORDANCE OF UKRAINIAN LEGISLATION WITH THE STANDARDS OF COUNCIL OF EUROPE ON THE PROTECTION OF YOUTH AND WOMEN'S LABOR RIGHTS

The article determines the degree of accordance of Ukrainian legislation with the standards of Council of Europe on the protection of youth and women's labor rights enshrined in the European Convention on Human Rights in 1950 and the European Social Charter (revised) 1996. It also identifies existing gaps in the national legislation and possible ways to deal with these gaps.

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JURISTENAUSBILDUNG IN ÖSTERREICH

I. Gesetzliche Rahmenbedingungen

1. Das Universitätsgesetz 2002

Das Studienrecht findet sich in Österreich imUniversitätsgesetz 2002 (abgekürzt:UG 2002)[1]. Dieses umfangreiche Gesetz regelt neben dem Organisationsrecht der Universitäten und dem Dienstrecht der Universitätsangehörigen in seinem II. Teil eben auch das Studienrecht. Nach § 54 Abs 1 UG 2002[2] sind die Universitäten berechtigt, Diplom-, Bachelor-, Master- und Doktoratsstudien einzurichten. Als eine der möglichen Gruppen von Studien finden sich in Z 6 auch die rechtswissenschaftlichen Studien.

In Österreich existieren fünf rechtswissenschaftliche Fakultäten: an den Universitäten Wien, Graz, Innsbruck, Salzburg und Linz. An allen genannten Fakultäten bestehen ein Diplomstudium der Rechtswissenschaften sowie ein Doktoratsstudium der Rechtswissenschaften. Zusätzlich bieten die Universitäten Wien, Innsbruck, Salzburg und Linz (nicht aber Graz) sowie die Wirtschaftsuniversität Wien und die Universität Klagenfurt ein Studium Wirtschaft und Recht an.

§ 54 Abs 2 UG 2002[3] legt fest, dass neueinzurichtende Studien nur als Bachelor-, Master- oder Doktoratsstudium eingerichtet werden dürfen. Ein Bachelorstudium der Rechtswissenschaften besteht allerdings an keiner der österreichischen rechtswissenschaftlichen Fakultäten. Nachdem rechtswissenschaftliche Studien wohl zu den traditionsreichsten Studien jeder Universität gehören, sah man an sämtlichen österreichischen Ausbildungsstätten für Rechtswissenschaften keine Notwendigkeit auf das sog. Bologna-Modell umzusteigen.

Die Gründe liegen auch in einer Skepsis der Rechtsanwalts- und Notariatskammer gegenüber den durch das Bologna-Modell festgelegten neuen Strukturenund insbesondere neuen Titeln gegenüber begründet[4]. Ursprünglich sollte der in einem klassischen Rechtsberuf Tätige Doktor der Rechtswissenschaften sein; bis Mitte der 80er Jahre des 20. Jahrhunderts war dies in Österreich der Regelabschluss eines rechtswissenschaftlichen Studiums. Anfang der 80er Jahre des 20. Jahrhunderts wurde das Studiensystem in Österreich umgestellt: Auf ein Diplomstudium der Rechtswissenschaften folgte ein Doktoratsstudium, das nur von einem kleinen Teil der Studienabgänger absolviert wurde. Erst sehr zögerlich begann man in Österreich auch den „neuen“ Magister der Rechtswissenschaften zu akzeptieren.

Deshalb ist man auch der Ausnahmebestimmung des § 54 Abs 3 UG 2002 nicht näher getreten. Danach kann der Arbeitsaufwand für ein Bachelorstudium in Ausnahmefällen, wenn dies zur Erlangung der Beschäftigungsfähigkeit zwingend erforderlich ist und diese Studiendauer international vergleichbar ist, bis zu 240 ECTS-Anrechnungspunktebetragen. Mit anderen Worten bedeutet das, dass also ein vierjähriges Bachelorstudium der Rechtswissenschaften eingerichtet werden könnte.

Ferner erscheint erwähnenswert, dass es für das Studium der Rechtswissenschaften in Österreich weder ein Aufnahme- noch ein Auswahlverfahren von Bewerbern gibt. Dies deshalb, weil Rechtswissenschaften unter jenen Studienbereichen des § 14 h UG 2002[5], für welche wegen besonders starker Nachfrage Zugangsregelungen festgelegt werden können, nicht erwähnt ist. Eine politische Diskussion darüber, das Studium der Rechte als Massenstudium in diesen Fächerkatalog aufzunehmen, hat aber im Frühjahr 2014 eingesetzt[6].

Bis auf weiteres bleibt es also noch bei der generellen Regelung des § 64 UG 2002, wonach die allgemeine Universitätsreife ausreichend ist, um Rechtswissenschaften zu inskribieren. Diese ergibt sich durch ein österreichisches Reifeprüfungszeugnis, ein Zeugnis über die Ablegung einer Studienberechtigungsprüfung für das Studium der Rechtswissenschaften oder ein gleichwertiges ausländisches Zeugnis.

Als ein gewisses Äquivalent zu den fehlenden Zugangsregelungen sieht der Gesetzgeber in § 66 UG 2002[7] eine sog. Studieneingangs- und Orientierungsphase vor. Diese ist so zu gestalten, dass sie dem Studierenden einen Überblick über die wesentlichen Inhalte des jeweiligen Studiums und dessen weiteren Verlauf vermittelt und eine sachliche Entscheidungsgrundlage für die persönliche Beurteilung seiner Studienwahl schafft. In der Studieneingangs- und Orientierungsphase sind mindestens 2 Prüfungen vorzusehen, welche maximal 2 Mal wiederholt werden dürfen. Sollte der Studierende auch bei der letzten Wiederholung negativ beurteilt worden sein, so erlischt die Zulassung zum Studium.

Für das österreichische Studiensystem ist weiter kennzeichnend, dass prinzipiell keine Studienbeiträge eingehoben werden[8]. Solche kommen nur bei bestimmten Studienzeitüberschreitungen und bei einzelnen Studierenden aus Drittstaaten in Betracht.

Fasst man also die Grundlagen des Studienrechtes zusammen, so ergibt sich, dass das UG 2002 nur einen sehr groben Rahmen absteckt. Die konkrete Umsetzung erfolgt auf untergesetzlicher Ebene, näherhin in den Satzungen der Universitäten[9] in deren „studienrechtlichen Bestimmungen“ und in den Curricula für die einzelnen Studienrichtungen, welche von den jeweiligen Curricula-Kommissionen vorbereitet, dem Rektorat zur Stellungnahme zugeleitet und schlussendlich vom Senat der jeweiligen Universität genehmigt werden.

Eine solche Regelungstechnik hat den Vorteil weitgehender Autonomie der einzelnen Universitäten, zugleich aber den Nachteil, dass sich die einzelnen Curricula ein und derselben Studienrichtung an den verschiedenen Universitäten sehr weit auseinander entwickeln können. Dies erzeugt einerseits Probleme bei der Anrechnung von Studienleistungen im Falle eines Wechsels des Studienortes. Andererseits sind damit eine gewisse Harmonisierung einzelner Studienbereiche und die Festlegung eines einheitlichen Mindeststandards nicht möglich.

2. Das juristische Standesrecht

Die vorstehend aufgezählten Faktoren sind aber für ein in ganz Österreich als gleichwertig anerkanntes Studium der Rechtswissenschaften nicht unerheblich. Der Gesetzgeber sah sich also genötigt, einschlägige Bestimmungen zu schaffen. Interessanter Weise tat er das aber nicht im UG 2002, sondern in den juristischen Standesrechten, nämlich der Rechtsanwaltsordnung und der Notariatsordnung sowie im Richter- und Staatsanwaltschaftsdienstgesetz mit jeweils gleichlautenden Bestimmungen[10].

Pars pro toto sei § 3 Rechtsanwaltsordnung[11] erwähnt. Demnach ist das zur Ausübung der Rechtsanwaltschaft erforderliche Studium des österreichischen Rechts an einer Universität zurückzulegen und mit einem rechtswissenschaftlichen akademischen Grad abzuschließen. Die Studiendauer hat mindestens 4 Jahre mit einem Arbeitsaufwand von zumindest 240 ECTS-Anrechnungspunkten zu betragen. Während des Studiums sind angemessene Kenntnisse über folgende Wissensgebiete zu erwerben:

1. Österreichisches Bürgerliches Recht und österreichisches Zivilverfahrensrecht,
2. Österreichisches Straf- und Strafprozessrecht,
3. Österreichisches Verfassungsrecht einschließlich der Grund- und Menschenrechte und österreichisches Verwaltungsrecht einschließlich des Verwaltungsverfahrensrechts,
4. Österreichisches Unternehmensrecht, österreichisches Arbeits- und Sozialrecht und österreichisches Steuerrecht,
5. Europarecht; Allgemeines Völkerrecht,
6. erforderlichenfalls sonstige rechtswissenschaftliche Wissensgebiete,
7. Grundlagen des Rechts; wirtschaftswissenschaftliche Wissensgebiete; sonstige Wissensgebiete mit Bezug zum Recht.

Die genannten Fächer werden auch noch durch ECTS-Anrechnungspunkte näher konkretisiert. So hat der Arbeitsaufwand für diese Wissensgebiete insgesamt zumindest 200 ECTS-Anrechnungspunkte zu betragen, wobei auf rechtswissenschaftliche Wissensgebiete zumindest 150 ECTS-Anrechnungspunkte zu entfallen haben. Der Nachweis der Kenntnisse ist durch positiv abgelegte Prüfungen und/oder positiv beurteilte schriftliche Arbeiten zu erbringen.

Ferner ist im Rahmen des Studiums eine schriftliche, positiv beurteilte Arbeit zu erstellen, deren inhaltlicher Schwerpunkt auf einem oder mehreren der genannten rechtswissenschaftlichen Wissensgebiete gelegen sein muss und die dem Nachweis der Fähigkeit zum selbständigen rechtswissenschaftlichen Arbeiten dient. Damit ist eine verpflichtend abzufassende Diplomarbeit angesprochen. Nach der Legaldefinition des § 51 Abs 1 Z 8 UG 2002 sind Diplom- und Masterarbeiten wissenschaftliche Arbeiten in den Diplom- und Masterstudien, die dem Nachweis der Befähigung dienen, wissenschaftliche Themen selbständig sowie inhaltlich und methodisch vertretbar zu bearbeiten.

3. Weitere Rechtsgrundlagen

Hinsichtlich des Doktoratsstudiums der Rechtswissenschaften gelten hingegen die allgemeinen und daher viel unbestimmteren Regelungen des UG 2002. Nach den Legaldefinitionen des § 51 Abs 1 Z 12-14 UG 2002 sind Doktoratsstudien die ordentlichen Studien, die der Weiterentwicklung der Befähigung zu selbständiger wissenschaftlicher Arbeit sowie der Heranbildung und Förderung des wissenschaftlichen Nachwuchses auf der Grundlage von Diplom- und Masterstudien dienen. Unter „Dissertationen“ versteht man jene wissenschaftlichen Arbeiten, die anders als Diplom- und Masterarbeiten dem Nachweis der Befähigung zur selbständigen Bewältigung wissenschaftlicher Fragestellungen dienen. Nach dem Abschluss der Doktoratsstudien werden Doktorgrade als akademische Grade verliehen. Sie lauten „Doktorin“ oder „Doktor“, abgekürzt „Dr.“ mit einem im Curriculum festzulegenden Zusatz, oder „Doctor of Philosophy“, abgekürzt „PhD“. Die Dauer von Doktoratsstudien beträgt nach § 54 Abs 4 UG 2002 mindestens 3 Jahre.

Alle diese Bestimmungen gilt es nun, in den Curricula der einzelnen juristischen Ausbildungsstätten in Österreich umzusetzen. Es ist klar, dass eine vergleichende Betrachtung dieser Curricula lohnend und interessant wäre. Sie würde aber den vorgegebenen Rahmen bei weitem sprengen. Daher wird hier eine beispielhafte Herangehensweise gewählt. Es soll im Folgenden die Situation an der Rechtsfakultät der Karl-Franzens-Universität Graz, jener Fakultät, der die beiden Verfasser angehören, dargestellt werden.

II.Ein konkretes Beispiel: Das Studium der Rechtswissenschaften an der Universität Graz

1. Das Diplomstudium der Rechtswissenschaften

Das an der Grazer Rechtswissenschaftlichen Fakultät geltende Curriculum für das Diplomstudium der Rechtswissenschaften (im Folgenden: Curr.Dipl.) ist bereits 1998 beschlossen worden und mit Beginn des Wintersemesters 1998/1999 in Kraft getreten. Es ist also nach heutigen Maßstäben relativ alt. Es wurde allerdings in der Zwischenzeit mehrfach geändert. Insbesondere wurde von der Curricula Kommission Rechtswissenschaften im Juni 2013 eine umfangreiche Novelle für das Diplomstudium der Rechtswissenschaften beschlossen[12], welche mit 1.10.2014 in Kraft getreten ist.

Das Curriculum sieht in seinem § 1 vor, dass das Diplomstudium der Rechtswissenschaften an der Rechtswissenschaftlichen Fakultät der Karl-Franzens-Universität Graz 8 Semester dauert und mit dem akademischen Grad eines Magisters der Rechtswissenschaften abgeschlossen wird. Das Studium ist dabei in 3 Studienabschnitte gegliedert. Der erste Studienabschnitt umfasst 2 Semester, der zweite Studienabschnitt 4 Semester und der dritte wiederum 2 Semester. Der betreffende Studienabschnitt wird jeweils mit der positiven Beurteilung aller Teile einer Diplomprüfung abgeschlossen; es wird keine Gesamtnote für die einzelnen Studienabschnitte vergeben.

Die Gesamtstundenanzahl des Diplomstudiums legt § 4 Curr.Dipl. fest. Sie beträgt abzüglich der freien Wahlfächer 112,5 Semesterstunden, welche eine Wertigkeit von 228 ECTS-Anrechnungspunkten haben. Einschließlich der freien Wahlfächer umfasst das Studium 240 ECTS-Anrechnungspunkte. Diese werden wie folgt auf die 3 Studienabschnitte verteilt:

1. Studienabschnitt: 26,5 Semesterstunden/55 ECTS-Anrechnungspunkte
2. Studienabschnitt: 66 Semesterstunden/113 ECTS-Anrechnungspunkte
3. Studienabschnitt: 20 Semesterstunden/60 ECTS-Anrechnungspunkte

Hinzu kommen – wie bereits erwähnt – freie Wahlfächer, welche im Ausmaß von 12 ECTS-Anrechnungspunkten zu absolvieren sind. Hiervon entfallen 5 ECTS-Anrechnungspunkte auf den 1.

und 7 ECTS-Anrechnungspunkte auf den 2. Studienabschnitt. Unter „freien Wahlfächern“ sind jene Fächer zu verstehen, welche die Studierenden aus Lehrveranstaltungen aller anerkannten in- und ausländischen Universitäten und Hochschulen frei auswählen können und über die Prüfungen abzulegen sind.

Durch die Novelle 2013 neu aufgenommen wurde in den Studienplan ein juristischer Leistungsnachweis in einer Fremdsprache. Gem § 5 Curr.Dipl. haben die Studierenden im Laufe des Studiums eine oder mehrere Lehrveranstaltungen im Ausmaß von 2 Semesterstunden – dies entspricht 3-5 ECTS-Anrechnungspunkten – zu absolvieren, die in einer lebenden Fremdsprache abgehalten werden und einen juristischen Bezug aufweisen müssen. Ein während eines Studienaufenthalts im Ausland erbrachter Leistungsnachweis einer in einer lebenden Fremdsprache absolvierten Lehrveranstaltung erfüllt diese Voraussetzung jedenfalls.

Auch neu geschaffen wurde die Möglichkeit von Ausbildungsschwerpunkten (§ 6 Curr.Dipl.). Demnach kann den Studierenden die Erlangung eines Zertifikats über einen Ausbildungsschwerpunkt angeboten werden. Ein solcher hat aus einem oder mehreren Pflichtfächern mit der Möglichkeit der Vertiefung in einem dieser Fächer oder in einer interdisziplinären Vertiefung zu bestehen. Er muss von mindestens 3 Lehrenden der Universität durch Vorlage eines Ausbildungsplans an den Studiendekan angemeldet werden.

Die am Beginn des Studiums verpflichtend zu absolvierende Studieneingangs- und Orientierungsphase umfasst die nachfolgenden Lehrveranstaltungen:

– Orientierungslehrveranstaltung für Rechtswissenschaften
– Der juristische Fall als Einstieg in das Recht
– Ausgewählte Kapitel des Privatrechts, des öffentlichen Rechts und des Strafrechts.

Die Pflichtfächer der Diplomprüfung im ersten Studienabschnitt sind die folgenden (§ 9 Curr.Dipl.):

– Die Fächer der Studieneingangs- und Orientierungsphase
– Internationale Dimensionen des Rechts: Grundzüge des Völkerrechts, des Europarechts und des Internationalen Privatrechts
– Rechtsethik und Rechtspolitik
– Rechtstheorie und juristische Methodenlehre
– Einführung in die Rechtsinformatik
– Römisches Recht als Grundlage der europäischen Rechtssysteme
– Österreichische und europäische Rechtsentwicklung
– Einführung in die Volkswirtschaftslehre mit juristischen Bezügen.

Die Diplomprüfung des zweiten Studienabschnitts setzt sich aus nachstehenden Pflichtfächern zusammen (§ 11 Curr.Dipl.):

– Verfassungsrecht und Allgemeine Staatslehre
– Verwaltungsrecht und Verwaltungslehre
– Bürgerliches Recht einschließlich Internationales Privatrecht
– Zivilgerichtliches Verfahren
– Strafrecht und Strafprozessrecht
– Europarecht
– Unternehmensrecht
– Völkerrecht
– Finanzrecht
– Arbeits- und Sozialrecht
– Methodik und Praxis des wissenschaftlichen Arbeitens.

In den Fächern „Verfassungsrecht und Allgemeine Staatslehre“, „Verwaltungsrecht und Verwaltungslehre“ sowie „Strafrecht und Strafprozessrecht“ ist jeweils ein vertiefender Kurs im Ausmaß von 2 Semesterstunden (5 ECTS-Anrechnungspunkte) verpflichtend. Im Fach „Bürgerliches Recht einschließlich Internationales Privatrecht“ sind 2 unterschiedliche vertiefende Kurse im oben wiedergegebenen Ausmaß vorgeschrieben. Hinzu kommt noch ein sog Wahlpflichtkurs. Dieser ist nach Auswahl des Studierenden in einem der 6 Fächer „Zivilgerichtliches Verfahren“, “Europarecht“, „Unternehmensrecht“, „Völkerrecht“, „Finanzrecht“, „Arbeits- und Sozialrecht“ abzulegen.

Im dritten Studienabschnitt wird den Studierenden die Möglichkeit einer Spezialisierung geboten. In dem gewählten Spezialisierungsgebiet sind Pflichtfächer im Ausmaß von 8 Semesterstunden sowie

frei gewählte Lehrveranstaltungen aus dem Katalog der Wahlfächer und der Pflichtfächer dieses Spezialisierungsgebietes im Gesamtausmaß von 6 Semesterstunden zu absolvieren. Wirtschaftswissenschaftliche Fächer, ein Kombinationsfach sowie 2 Semesterstunden, welche aus den Katalogen der Pflicht- und Wahlfächer gewählt werden können, treten hinzu. Ein „Kombinationsfach" ist eine Lehrveranstaltung im Ausmaß von 2 Semesterstundenbzw 3-5 ECTS-Anrechnungspunkten. Zumindest ein Gebiet des Kombinationsfaches muss ein Pflichtfach des Diplomstudiums sein. Zweck des Kombinationsfaches ist die Vermittlung von fächerübergreifenden Kenntnissen an Hand von konkreten Fällen oder Projekten. Die Lehrveranstaltungen in diesem Bereich können auch in Form von Prozessspielen (Moot Courts) gestaltet werden. Es ist im Wege gemeinsamen Lehrens (Team-Teaching) vorzugehen (§ 13 Abs 10 Curr.Dipl.).

Die vorne erwähnten wählbaren Spezialisierungsgebiete sind (§ 13 Abs 2 Curr.Dipl.):

– Internationale Beziehungen
– Justiz
– Öffentliche Verwaltung
– Politik und Gesellschaft
– Wirtschaft.

Anstelle eines der 5 Spezialisierungsgebiete kann auch eine „freie Kombination" aus Pflicht- und Wahlfächern aller Spezialisierungsgebiete gewählt werden.

Eine besondere Bedeutung kommt im 3.Studienabschnitt der Rechtsvergleichung zu. Nach der grundlegenden Vorschrift des § 13 Abs 11 Curr.Dipl. ist in den juristischen Fächern (Pflicht- und Wahlfächern) des 3. Studienabschnitts die Rechtsvergleichung als Fach und Methode eingeschlossen.

Zusätzlich zu den Diplomprüfungen ist eine positiv beurteilte Diplomarbeit erforderlich. Die Diplomarbeit im 3. Studienabschnitt im Ausmaß von 30 ECTS-Anrechnungspunkten besteht aus einer schriftlichen Hausarbeit und ihrer mündlichen Verteidigung (Defensio). Sie wird mit einer Gesamtnote bewertet. Das Thema der Diplomarbeit ist einem der im Studienplan festgelegten Prüfungsfächer mit Ausnahme der wirtschaftswissenschaftlichen Fächer zu entnehmen. Wird für die Diplomarbeit ein nichtjuristisches Fach gewählt, so hat die Arbeit einen Bezug zum Recht aufzuweisen (§ 16 Curr.Dipl.). An die Absolventen wird– wie bereits erwähnt – der akademische Grad eines Magisters der Rechtswissenschaften verliehen.

2. Das Doktoratsstudium der Rechtswissenschaften

An das positiv beendete Diplomstudium kann ein Doktoratsstudium anschließen. Das Curriculum für das Doktoratsstudium der Rechtswissenschaften (im Folgenden: Curr.Dr.) datiert aus dem Jahr 2009[13]. Nach der Grundlagenbestimmung des § 1 Curr.Dr. setzt sich das Doktoratsstudium der Rechtswissenschaften zum Ziel, die Befähigung zum selbständigen wissenschaftlichen Arbeiten weiterzuentwickeln sowie den wissenschaftlichen Nachwuchs auf der Grundlage von Diplom- bzw Masterstudien heranzubilden und zu fördern. Die Dissertanten haben im Doktoratsstudium den Nachweis zu erbringen, dass sie in der Lage sind, durch selbständige wissenschaftliche Arbeit einen Beitrag zur Weiterentwicklung der Rechtswissenschaften zu liefern.

Die Dauer des Doktoratsstudiums der Rechtswissenschaften beträgt den gesetzlichen Vorgaben entsprechend 3 Jahre. Das Studium ist nicht in Studienabschnitte gegliedert. Im Doktoratsstudium sind Studienleistungen im Ausmaß von insgesamt 180 ECTS-Anrechnungspunktenzu erbringen. Diese setzen sich aus der Präsentation und Verteidigung des geplanten Dissertationsprojekts (20 ECTS), der Abfassung der Dissertation (125 ECTS), der Absolvierung von 2 Doktoratskolloquien im Dissertationsfach (10 ECTS) sowie von drei Seminaren in einem Spezialisierungsfach (15 ECTS) zusammen. Das Doktoratsstudium wird durch ein Rigorosum (10 ECTS) abgeschlossen (§ 3 Curr.Dr.).

Für die Zulassung zum Doktoratsstudium muss der Nachweis des Abschlusses eines fachlich in Frage kommenden Diplomstudiums oder Masterstudiums oder eines anderen gleichwertigen Studiums an einer anerkannten inländischen oder ausländischen Bildungseinrichtung erbracht werden. Dieser Nachweis ist jedenfalls bei Absolventen eines Diplomstudiums der Rechtswissenschaften an einer inländischen Universität gegeben (§ 4 Curr.Dr.).

Spätestens am Ende des ersten Studienjahres nach Zulassung zum Doktoratsstudium soll der jeweilige Dissertant sein Studienprogramm beim Studiendekan schriftlich anmelden. Die Anmeldung umfasst den Vorschlag eines Dissertationsthemas, den Vorschlag eines Erst- und Zweitbetreuers, die Benennung des Dissertations- und Spezialisierungsfaches und die Vorlage eines ExposészumDissertationsprojekt. Der Dissertant ist dabei berechtigt, das Thema der Dissertation vor-

zuschlagen oder es aus einer Anzahl von Vorschlägen der zur Verfügung stehenden Betreuer auszuwählen (§ 5 Curr.Dr.).

Nach Einlangen der Anmeldung und bei Vorliegen der vorhin geschilderten formalen Voraussetzungen erfolgt eine formelle Verteidigung des Dissertationsprojektes nach den Vorschriften des § 6 Curr.Dr.. Der Studiendekan setzt zu diesem Zweck eine Promotionskommission ein. Diese besteht aus ihm selbst als Vorsitzenden sowie den beiden vorgeschlagenen Betreuern.

Die Verteidigung des Dissertationsprojekts erfolgt in einer mündlichen kommissionellen Prüfung, welche innerhalb von 4 Wochen nach Anmeldung im Beisein aller Mitglieder der Promotionskommission stattzufinden hat. Der Dissertant hat das Dissertationsprojekt in einem Zeitrahmen von ca. 20-40 Minuten vorzustellen. Im Anschluss daran erfolgt eine Erörterung, in der die Mitglieder der Promotionskommission Fragen zum Dissertationsprojekt stellen können. Nach positiver Beurteilung des Dissertationsprojekts ist eine Betreuungsvereinbarung zwischen Betreuer und Dissertant zu unterfertigen.

Im Dissertationsfach sind zwei Lehrveranstaltungen in Form eines Doktoratskolloquiums im Ausmaß von jeweils 5 ECTS-Anrechnungspunkten zu absolvieren. Voraussetzung für den Besuch dieser Lehrveranstaltungen ist die positive Beurteilung des Dissertationsprojekts. Neben den Lehrveranstaltungen im Dissertationsfach hat der Dissertant drei weitere je 2stündige Seminare im Ausmaß von jeweils 5 ECTS-Anrechnungspunkten in einem anderen Fach, das an der rechtswissenschaftlichen Fakultät vertreten wird, zu absolvieren. Voraussetzung für den Besuch dieser Lehrveranstaltungen ist ebenfalls die positive Beurteilung des Dissertationsprojekts (§§ 8 und 9 Curr.Dr.).

Kern des Doktoratsstudiums ist selbstredend die Verfassung einer Dissertation, die den Kriterien des UG 2002 zu entsprechen hat (siehe dazu schon oben I.3.). Diese ist von den beiden Betreuern zu begutachten.

Abgeschlossen wird das Doktoratsstudium mit einem Rigorosum nach den Vorgaben des § 10 Curr.Dr.. Dieses Rigorosum ist in Form einer mündlichen kommissionellen Prüfung vor der Promotionskommission nach positiver Beurteilung der Dissertation sowie positiver Absolvierung aller Lehrveranstaltungen im Dissertations- und Spezialisierungsfach abzulegen. Es besteht aus der Verteidigung der Dissertation (Defensiodissertationis) sowie der Überprüfung der Kenntnisse des Dissertanten im Dissertationsfach. Im Rahmen der Verteidigung der Dissertation hat der Dissertant zunächst in einem Vortrag in der Dauer von ca. 20–40 Minuten den Inhalt und die Ergebnisse der Dissertation zu präsentieren. Danach ist die Arbeit zu erörtern, wobei der Dissertant die Ergebnisse der Arbeit zu verteidigen und wissenschaftliche Befähigung und Methodenkompetenz nachzuweisen hat.

Das Doktoratsstudium der Rechtswissenschaften ist abgeschlossen, wenn die Dissertation, alle Lehrveranstaltungen und das Rigorosum positiv beurteilt wurden. An die Absolventen des Doktoratsstudiums der Rechtswissenschaften ist der akademische Grad „Doktor der Rechtswissenschaften“, lateinisch „Doctoriuris“, abgekürzt „Dr.iur“ zu verleihen.

3. Masterstudien

Zusätzlich zum Doktoratsstudium der Rechtswissenschaften bietet die Grazer Rechtswissenschaftliche Fakultät eine Reihe weiterer Studienprogramme an, die in der „School of International andAdvanced Studies“ gebündelt werden[14]. Zu diesen Masterprogrammen gehören unter anderem:

– Masterstudium Political, Economic and Legal Philosophy

– Joint Master’s Programme in South-Eastern European Studies

– Universitätslehrgang Kunst und Recht

– Joint Degree Universitätslehrgang Business Law and Economic Cooperation between the EU and Russia

– European Regional Master’s Programme in Human Rights and Democracy in South East Europe.

III.Eine (kritische) Schlussbemerkung

Es zeigt sich also, dass das Studium der Rechtswissenschaften in Österreich in einem bunten Zusammenspiel aus Gesetzen und Curricula – diese stellen autonome Verordnungen der Universitäten dar – geregelt ist. In diesem Zusammenhang stellt sich natürlich die Frage nach der Sinnhaftigkeit all dieser Regelungen, nach legistischen Schwachstellen und einer europäischen Perspektive. All diesen Fragen soll in einer abschließenden Analyse nachgegangen werden.

Das Universitätsgesetz 2002 wurde als großer Schritt für die Deregulierung und für die Autonomie der Universitäten gefeiert. Hinsichtlich der Curricula brachte es mit der weitgehenden Autonomie der Curriculakommissionen, deren Inhalte festzulegen, aber gewisse Nachteile für eine oftmals anzustrebende Einheitlichkeit und Harmonisierung.

In diesem Zusammenhang muss erwähnt werden, dass die nunmehr erfolgte Harmonisierung der rechtswissenschaftlichen Curricula durch das Standesrecht der Rechtsanwälte und Notare sowie das Richter- und Staatsanwaltschaftsdienstgesetz nur eine Hilfslösung darstellt. Dies schon deshalb, weil sich theoretisch die jeweilige Curriculakommission nicht daran halten müsste, geht es doch ausschließlich um Zugangsregelungen für die genannten Rechtsberufe und ist das Spektrum juristischer Tätigkeiten doch erheblich weiter. Faktisch ist es aber unmöglich, diese Vorgaben zu ignorieren, stellen doch die Berufe Rechtsanwalt, Notar, Richter und Staatsanwalt einen Kernbereich juristischen Wirkens dar und kann wohl keine Rechtsfakultät Absolventen gänzlich am Arbeitsmarkt vorbei produzieren.

Alles in allem lässt sich sagen, dass das vor dem UG 2002 bestehende System wahrscheinlich besser war. Da gab es ein Universitäts-Studiengesetz, welches die allgemeinen Richtlinien des Studiums festlegte, ein eigenes RechtswissenschaftlichesStudiengesetz, eine diesesGesetz konkretisierende ministerielle Studienordnungund einen detaillierten Studienplan der jeweiligen Curriculakommission[15]. Man hätte auch in diesem System eine Deregulierung durchführen können, indem man zB die Ebene der ministeriellen Studienordnung weggelassen hätte.

Die starke Verknüpfung der Juristenausbildung mit den Erfordernissen und Vorstellungen der klassischen Rechtsberufe führte auch – wie bereits vorne erwähnt – zu einer Ablehnung des Bologna-Modells. Nicht einmal die Ausnahmeregelung des § 54 Abs 3 UG 2002, nämlich ein Bachelorstudium mit 240 ECTS-Anrechnungspunkten zu schaffen,war bis jetzt ein Thema. Hier schwingt die schon reflektierte traditionelle Auffassung mit, dass ein Jurist in Österreich mindestens Magister wenn nicht sogar Doktor sein muss. Relativierend soll an dieser Stelle allerdings erwähnt werden, dass auch in anderen Mitgliedsstaaten der EU gerade bei der Juristenausbildung Probleme mit dem Bologna-Modell bestehenbzw dieses – wie in Deutschland – schlicht und einfach abgelehnt wird.

Bezogen auf die lokale Ebene des Diplomstudiums der Rechtswissenschaften an der Karl-Franzens-Universität Graz lässt sich zunächst ausführen, dass es bei sämtlichen juristischen Diplomstudien in Österreich eine Glaubensfrage ist, ob das Curriculum zwei oder drei Abschnitte aufweisen soll. Aus Grazer Sicht haben sich die bestehenden drei Studienabschnitte bewährt. Dabei kommt es zwar zu Wiederholungen der Inhalte bei den Kernfächern Privatrecht, Öffentliches Recht und Strafrecht. Diese werden aber nicht als Nachteil gesehen, sondern bewusst hingenommen, damit sich das erworbene Wissen besser setzen kann.

Alles in allem lässt sich sagen, dass das Studium der Rechtswissenschaften wohl eines der traditionellsten universitären Studien ist. Die meisten Fachgebiete und deren Umfang stehen bereits seit langem fest. Gerade in einem solchen Umfeld ist aber übertriebene Originalität und vorgeblicher Modernismus bei der Studienplangestaltung fehl am Platz. Bewährte Modelle sollten vielmehr stets übernommen und weiterentwickelt werden. Für revolutionäre Änderungen besteht in Österreich in den davon betroffenen Kreisen keine Akzeptanz.

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[1] Bundesgesetzblatt (BGBl) I 120/2002 in der geltenden Fassung.

[2] Siehe dazu Perthold-Stoitzner, § 54, in: Mayer (Hrsg), Kommentar zum Universitätsgesetz 2002, 2. Aufl, Wien 2010, 248 ff.

[3] Siehe dazu Perthold-Stoitzner, in: Mayer (Hrsg), Universitätsgesetz 2002, 248 f.

[4] Siehe dazu die Stellungnahme des Österreichischen Rechtsanwaltskammertages zum Baccalaureatsstudium für Juristen – Anwaltstag 2005, Anwaltsblatt 2006, 93.

[5] Siehe dazu Perthold-Stoitzner, Registrierungsverfahren, Aufnahme- bzw Auswahlverfahren, Zulassungsverfahren. Anmerkungen zur Neuregelung des § 14 h UG, Zeitschrift für Hochschulrecht 2013, 75 ff.

[6] Siehe zB Der Standard 19.2.2014; http://derstandard.at/1392685595531/Rechtswissenschaften-koennten-beschraenkt-werden; Die Presse 1.10.2014; http://diepresse.com/home/panorama/oesterreich/3879149/UniWienRektor_Halte-nicht-viel-von-Aufnahmetests? from=suche.intern.portal

[7] Siehe dazu Hattenberger, Straffung des Studieneingangs durch die UG-Novelle 2011?, Zeitschrift für Hochschulrecht 2011, 83 (85 ff).

[8] Die Frage der Einführung genereller Studienbeiträge wird in Österreich politisch sehr kontroversiell diskutiert.

[9] Vgl Art 81c Abs 1 B-VG.

[10] Berufsrechts-Änderungsgesetz 2008, BGBl I 111/2007, bzw BGBl I 96/2007 hinsichtlich Richtern und Staatsanwälten.

[11] Dazu ausführlich: Rechtsanwaltsordnung. Texte, Materialien, Judikatur, 2. Aufl, Linz 2012, 60 ff.

[12] Mitteilungsblatt der KFU Graz, Studienjahr 2012/13, 39h. Stück.

[13] Mitteilungsblatt der KFU Graz, Studienjahr 2008/09, 41 f. Stück.

[14] Eine Gesamtübersicht dieser Programme findet sich auf http://rewi.uni-graz.at/de/studieren/sias/

[15] Zu dieser Regelungstechnik vglStrasser, Rechtswissenschaftliches Studiengesetz, Graz 1981.

УДК 347.6

Valeriya Zayets, *law student of National University named after Taras Shevchenko*

ESTABLISHMENT AND DEVELOPMENT HUMAN RIGHTS IN REPRODUCTIVE MEDICINE

Studying human rights we sometimes lose sight of the basics. This essay briefly explores the core problems of establishment and development human rights in reproductive medicine.

Today we use the word rights as shorthand for human rights. In my opinion it is inappropriate because there are many different kinds of rights such as children's rights, donor's rights, patient's rights and parent's rights.

There are a lot of authors of domestic and foreign legal literature who explore various aspects of this problem such as: G. Kent, T. Drobyshevska, A. Ballayeva, M. Malyeyina, J. Drohonets, L. Krasavchykova, A. Lukasheva, G. Romanov, S. Romovska, K. Svitnev, I. Senyuta, R. Stefanchuk, S. Stecenko, A. Hazova and others.

I agree with Professor George Kent, who said: "While human rights are universal, they do allow some latitude for differing interpretations, depending on local circumstances. They are mainly, but not exclusively, about the obligations of national governments to people living under their jurisdictions, as spelled out in international human rights law".

Unfortunately, when I analyze his works and other scientific literature of human rights in reproductive medicine I find out that it generally written in the context of the right to life or the right of health. That's why the theme of this essay is very relevant.

Ukraine is one of the states in which reproductive technologies allowed by law: The Family Code of Ukraine (Art.123), the Civil Code of Ukraine (Articles 281, 627), the Law of Ukraine "On the transplantation of organs and other anatomical human materials" from July 16, 1999, the Rules of Civil Registry Office in the wording of the order Ministry of Justice of Ukraine from October 18, 2010 № 52/5, Instruction on the use of assisted reproductive technology, approved by order of the Ministry of Health from 23 December 2008 p. № 771.

Notwithstanding, there is no law definition of the donation of reproductive cells or donor gametes and embryos.

However, there are a number of subordinate legal acts that regulate the use of the donation of gametes and embryos, one of which is the order of the Ministry of Health of Ukraine "On Approval of Instruction on the use of assisted reproductive technology" (hereinafter – the Ministry of Health decree № 771) containing relatively rigid and strict requirements for donors (both men and women): 1) born a healthy child; 2) absence of negative phenotypic manifestations; 3) satisfactory somatic health; 4) no contraindications for participation in the donation; 5) absence of hereditary diseases; 6) lack of addictions (drug addiction, alcoholism, substance abuse). I believe that such claims are true, because their observance guarantee having a healthy baby.

While using donor gametes recipient is given its phenotypic portrait (age, height, eye color, hair, etc.). Other information recipient is not informed.

According to Part 3 Art. 290 Civil Code of Ukraine, recipient should not know a person and face of donor, and the recipient's person and face – the family of the donor, unless the donor and recipient are relatives.

In accordance with Order Ministry of health of Ukraine № 771 donor oocytes can be as anonymous donors or not, which gives us reason to believe that in Ukraine the donation may be open.

It should be underlined that the issue of anonymous donation of reproductive cells in the world is quite controversial because:

Firstly, it violates the child's right to know his or her genetic parents (if using donor gametes) are;

"The world constitution of children's rights" called the Convention on the Rights of the Child adopted by the General Assembly on 20 November 1989. The rules of this Convention apply as part of the national legislation of Ukraine on September 27, 1991, since the ratification by Ukraine.

According to the UN Convention on the Rights of the Child of 1989, a child from birth has the right to know his or her parents and use their care (Art. 7).

It is worth noting that in the preamble to the Convention on Contact concerning Children, which was ratified by Ukraine at September 9, 2009 clearly states: "States – members of the Council of Europe and the other States signatory hereto agree on the need for children to contact not only with the two parents, but also with certain other persons having family ties with children and parents on the importance of other such persons maintain contact with the children, taking into account the best interests of the child.

Articles 4, 5 of the Convention on Contact concerning Children state that the child and his parents have the right to establish and maintain regular contact with each other. Such contact may be restricted or excluded only when necessary in the best interests of the child. If uncontrolled maintain contact with one of the parents is not in the best interests of the child, then the possibility of a supervised personal contact or other forms of contact with one of the parents. Taking into account the best interests of the child can be contacted between the child and persons who are not his or her parents, but have family ties with the child.

Secondly, in the case of open donation may inflict (moral) injury as a child and the parents who raised her.

According to Article 123 of the Family Code of Ukraine and the Law of Ukraine "On the transplantation of other human anatomical material" couple who agreed to the use of reproductive technologies has parental rights and responsibilities in relation to children born as a result of these techniques.

From a legal point of view, the legal status of the donor as the subject of civil relations is rather ambiguous. Based on the merits of family relations, the donor can't be the subject because there is no such relationship by blood, marriage, adoption, which is a prerequisite for proof of family relationship. However, from a medical point of view, the surrogate mother who carries a child passes her immunity, ets.

However, Ukraine does not allow challenge of motherhood biological mother surrogate mother. The legislator has provided benefits in terms of biological parents, because in practice there are cases of blackmail, causing damage to the child, the disclosure of confidential information by the donor.

That's why, in my opinion, it is necessary to add in the contract between the donor and the parents of the unborn child a section on responsible parties for non-fulfillment or improper fulfillment of their obligations. This section should specify penalties for systematic violations of the donor of the contract.

Parties should focus in more detail on the conditions of liability for improper performance or non-performance of the contract.

A strict liability (penalties, recovery of costs from unfair side of non-pecuniary damage) will encourage the parties to properly guaranteed performance that will protect the rights and interests of both the child and parents.

Answers to this question are quite different in foreign countries. An anonymous donation allowed in of Denmark, Spain, France, Czech Republic and many other countries.

Among the countries in which establishes the right of a child born using donor gametes know his or her genetic parents are Switzerland, Norway, United Kingdom.

In my opinion, not anonymous donation is the wrong way. And there are some reasons:

Firstly, it decreases the number of donors, leading to a lack of genetic material, the appearance of illegal clinics.

UDC 340.1; 346.1

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CORPORATE ACTS

System and sources of law was and remains one of the most discussable topics of today. In historical retrospect, some sources play a larger role in the legal life, other can are minor or can disappear completely. However, we can observe the reverse process: when nowadays some of unimportant sources are becoming important, which in certain space-time dimensions has played no significant role, in particular, this may be true for the regulatory contract, corporate acts and more.

It is clear, that corporate rulemaking should be perfectly inscribed in the national legal system, follow the general rules and techniques of lawmaking, celebrated high legal culture. It is necessary to determine the location of corporate acts in the overall hierarchy of legal acts, to determine the characteristics of their implementation, and the degree of binding mechanisms to ensure that applicable entities of private law.

Corporate acts established by institutions and not contrary to law, are legally binding on all subjects of internal relations and government bodies, other commercial and non-profit organizations. Corporate instruments are widely used by the judicial authorities, particularly in disputes about contract enforcement and recognition of transactions void, disputes relating to the adoption and implementation of management decisions, labor disputes and so on.

Effects of corporate acts directly related to such categories as legal authority. Legal validity of an act is determined by the place in the system of the state of the body, I on behalf of whom it was issued. This formula is adopted in relation to acts of public authorities, but how to determine valid corporate act, which was adopted on behalf of the organization, not part of the public authorities.

Corporate Ownership Act to the system of local regulation at the level of the whole system of legal regulation defines the dual nature of its legal effect. The latter is determined at the national level fixed by the organization as an autonomous subject of law-making powers and the degree of generality of corporate regulations, and at the local level – the location of the corporate body that made the act in the internal system of organization.

So, the corporate act is an independent source of law, which is established by means of direct law-making collective private and legal entities as part of the rights provided by the laws that are part of their personality.

The nature and essence of corporate law, corporate relations, corporate unification, unfortunately, not been sufficiently studied in domestic jurisprudence. The author stresses the need to bridge this gap and substantial improvement of legal theory and practice in the development and implementation of knowledge about corporate acts, corporate rulemaking, corporate standards, corporate unification.

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