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The editor-in-chief: (+38044) 278-51-55. The editor: (+38044) 235-63-24.

E-mail: chasprava@ukr.net www.kul.kiev.ua

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Yuryi Shemshuchenko, *Director of Koretsky Institute of state and law of National Academy of Sciences of Ukraine, Doctor of Law Sciences, Professor, Academician of National Academy of Sciences of Ukraine, Academician of Ukraine Law Sciences Academy*

Mykola Pukhtynskyi, *Candidate of Science (Law), Associate Professor, Senior Researcher of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

CONCEPTIONAL, CONSTITUTIONAL, POLITICAL AND LAW BASIS TERRITORIAL ORGANIZATION OF PUBLIC AUTHORITY

Updates to the Constitution, the process of constitutional and legal modernization associated with the development of an integral system of public authorities, public administration, governance in Ukraine. In particular, this applies to the territorial organization of public power. Management in the European sense (governance) has two components: institutional and functional. Institutional – outlines a range of management subjects: the institutions of public authority, in particular, local governments, civil society, community organizations and citizens. Functional – involved forging process proper (good governance) governance, public administration under the control of civil society.

Such a control system was started in the square and it should be reflected in the amended Constitution, at both the national and territorial levels of the organization of public authority. In this sense, it is appropriate to consider the correlation of the corresponding norms of the first section of the Constitution of Ukraine, namely Art. Art. 5 and 6, and to offer the following design revision. By including a 2 item 5: “The Bearer of sovereignty and the only source of public power in Ukraine is the people. The people exercise public power directly and through bodies of state power and bodies of local self-government with the participation of civil society organizations “. Under Art. 6: “Public power in Ukraine is exercised on the basis of unity, separation of state power into legislative, Executive and judicial, as well as equilibrium and balance its branches, the omnipresence of local self-government in the system of administrative-territorial structure of Ukraine, the interaction between state authorities and local self-government.

UDC 343.97

Oleksandr Kostenko, *Doctor of Science (Law), Professor, Academician of the National Academy of Legal Sciences of Ukraine, Head of the Criminal Law, Criminology and Judicial System Department of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

"HUMAN FACTOR" – THE MAIN ANTI-CORRUPTION MEAN

State institutions and institutions of civil society – is just social mean that should be used by people according to their condition of "human factor", i.e. according to their level of moral culture.

No other mean does not "work" on their own, without bringing them into action by people. Moreover, as will "work" any tools in the hands of people – it depends on the "human factor". So if the entire contents of reforms in society reduced only to improve social means, while ignoring the need to develop "human factor", it does not give the expected results.

Ukrainian reformers obviously need to realize this regularity concerning the relationship between social means that are used by people in their social practice, and the "human factor", which should operate these means (including institutions of legislative, executive and judicial authorities, as well as various institutions of civil society, etc.). It was then they will be armed with an effective methodology reforming Ukrainian society. The quality of life of each every member of society does not depend only on the quality of public institutions or civil society institutions. It depends on determining the state of the "human factor", i.e. the social characteristics of each member of society, who enters the national public relations.

In particular, condition of the "human factor" in the doctor where citizen is treated, the teacher who teaches us, the entrepreneur whose products or services we consume, the official, to whom we turn, the participant of the road traffic side by side with whom we are moving etc.

No matter how pro-European the Ukrainian legislation would be reformed, regulating the activities of public institutions and civil society institutions, life in Ukraine will not become European, provided that our state will be developed with European standards "human factor". In particular, no one anti-corruption reforming of the Ukrainian legislation or administrative institutions are not able to destroycorruption in Ukraine, if citizens do not have a developed moral culture that has properties anti-corruption.

However, today in Ukraine anticorruption potential problem of using "human factor" is not actualized. This situation is not primarily caused quite common in society illusions about those means to be used in combating corruption.

From "instrumental concept legislation" follows the decisive role is "human factor" in law enforcement, which can be formulated in particular as follows: "LIVING IN LAW ONLY moral people is immoral – do not live according to the law". The conclusion should not overestimate the role of legislation (and the legislator, i.e. Parliament) and underestimate the role of morality in our lives!

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: ILLUSION INDUCTION

The most important and sometimes the only method of scientific knowledge have long believed only the inductive method. According induktyvistskoyi methodology of scientific knowledge begins with observation and fact. Once the facts are established, begin the process of generalization and nomination theory.

Founder of critical rationalism Popper first formulated the problem of induction in a short article "The criterion of empirical theory" (1933) Yumovska problem of induction, that is the question of the authenticity of the laws of nature, arises from the apparent contradiction between the principle of empiricism (which states that only "experience" to judge the truth or falsity of factual statements) and awareness of the fact that inductive (or generalized) false reasoning. This problem and offers to fix it, and formulated in detail Popper argued in his famous work "The logic of scientific research" (1934). In this work confirms the strong Popper antyinduktsiynu focus its concept.

Popper argues that the principle of induction totally unnecessary and, moreover, it inevitably leads to logical contradictions. Indeed, the principle of induction must be a universal statement. Therefore, any attempt to bring the truth of his experience back in full encounter the same problems for which the principle was introduced. Thus, in order to justify the principle of induction, we need to use inductive inference, to justify the latter is necessary to introduce inductive inference of a higher order, and so on. Thus, an attempt to justify the principle of induction, based on experience, the need to fail because it inevitably leads to an infinite regress. In terms of Karl Popper, described the difficulties encountered in inductive logic, insurmountable. The theory of Karl Popper immediately and directly opposes all attempts to act on the ideas of inductive logic. It could be defined as a theory of deductive method validation or as a principle, according to which hypothesis can be verified empirically only and only after it was launched.

Historically Popper found the new solution yumovskoyi psychological problem of induction before the proposed solution logical problem: it is therefore the first time he realized that induction – faith formation through repetition – a myth.

The question of the ways in which a new idea – a scientific theory – comes a man can represent significant interest to empirical psychology, but it absolutely does not belong to the logical analysis of scientific knowledge. Logical analysis does not affect issues of fact and applies only to matters of justification or foundation.

The doctrine of knowledge through an inductive process is flawed interpretation of knowledge; knowledge begins not with observation, and the problem, and not carried inductive and hypothetico-deductive way. That is, induction, or logic (logic as a formal procedure) or psychological (as a psychological process), no need for cognition. Previously believed that knowledge begins with observation and experience on which then result in their generalizations formulated the theory, now under new methodological orientations, theories do not arise from our observations and experiments, and only checked on them, that is critical rationalism K. Poppera does not refuse from observations and experiments, they simply act as checks.

The idea of induction through repetition should be treated as having occurred by mistake – a kind of optical illusion. There is no such thing as induction through repetition.

Induction – a hopeless mess … induction plays no role in the method of science and the growth of science.

Therefore, in this study set out arguments about the impossibility of inductive logic in scientific research, which means that within critical legal thinking all legal theory must consider assumptions that can be checked using critical deductive logic.

UDC 340.15; 342.56; 347.97/.99

Anastasiia Ivanova, *Candidate of Science (Law), Senior Researcher of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

CRISIS OF THE STATE POWER AND NON-STATE COURTS DURING THE UKRAINIAN REVOLUTION OF THE 1917–1921TH

There was determined two forms of the non-state justice at the crisis of the State power on the materials of the Ukrainian revolution period: 1) lynching and arbitrariness and 2) extraordinary justice. It's concluded that in the transitional states lynching is objective reality. Increasing the number of lynching can be one of the signs of the crisis of the government, and/or evidence of the ineffectiveness of the judiciary in the State.

We can identify several criteria for characterization of the non-state judiciary in the Ukrainian revolution's period.

1. The most bodies of the non-state judiciary was a local non-state authorities. Obviously the situation is due to the fact that the central and the high level was better controlled by the State.

2. The forms of the non-state judiciary should be divided into: 1) public self-government, not always institutionally framed. It is recognized by the people and exercise powers based on the "oral mandate" of the people; 2) actual military authorities, able to provide the adoption and implementation of its decisions. They act regardless of acknowledgment by the people.

3. The primary source of law, applied by the public self-government, was the legal conscience in various forms (legal conscience of the people, legal conscience of the crowd, the revolutionary legal conscience). The actual authorities as sources of law mainly applied orders of the heads and revolutionary legal conscience.

It is interesting that the jurisdiction of the non-state justice was determined in several ways. 1) on the subject of the offense. Thus, the public self-government reviewed crimes committed in the territory of the community or members of the respective communities. 2) on the object of the offense – punishable crimes, crimes against public order reviewed by the extraordinary justice.

At the crisis of the State power to the fore the public self-government. It performes governmental functions, has real power and doesn't require State supply, because acting under a public mandate and enjoys it's high trust and support. It seems, that it is public self-government has gradually formalized in local government who remain to operate in terms of the restored State power.

UDC 340.12 (477)

Yelyzaveta Kopeltsiv-Levytska, *Candidate of Science (Law), Associate Professor of the Ivan Franko State Pedagogical University of Drogobych*

THE REALIZATION OF HUMANISTIC POTENTIAL OF UKRAINIAN LEGAL SYSTEM AS OPPOSED TO THE EAST-WEST LEGAL SYSTEMS

The Ukrainian nation has been really formed and functioned on the border of East and West thus combining some eastern and western mental characteristics. Although some phenomena with which those characteristics are connected were formed by ancient Ukrainians.

There is no coincidence that we characterize such characteristics of ukrainian people's mentality as kindness, non-violence or piece-loving. Right they brightly demonstrate the connection of Ukrainian people's mentality with European mentality as compared to eastern, Asian mentality.

The humanistic trend of Ukrainian people's legal consciousness had to be essential to keep pace with corresponding ideas of Europeans of that time about law. Furthermore the legal humanism of Ukrainian people in the Middle Ages was often more accent than the European one. For example we observe the absence of expressive aggressiveness in the underdevelopment of such form of fight instinct as revenge. Our contemporary V.Yaniv paid attention to this fact. While analysing the Ukrainian people's mentality, he notices that: "The revenge that still exists in some parts of Europe (in XXth century – E. K.-L.) was rejected in Rus by the law of XI century. This reform undoubtedly reflected the disposition of population".

We can similarly regard the institute of punishment: for ancient Ukrainians it took the humanistic characteristics at dawn of history. The punishment was caused by crime but in contrast to that Europe not at the cost of human life or crippling. For Ukrainians the most important was property punishment. You could pay off even for the boyar slaying. There existed no punishment by death. So on the one hand we can assume that Ukrainians are so greedy that they are ready to earn money on the deaths of their fellow countrymen and on the other hand that they understood the price and value of human life. The punishment by death was established at the wish of clergy per foreign samples only in the days of Kniaz Vladimir but soon it was cancelled. It probably didn't correspond to our people's legal mentality.

As to the backers of Eurasian concept (I. Isaev, V. Syniukov, Iu. Oborotov and others) it should be emphasised that the main characteristic of Turkic and thus the Asian statehood lies in unconditional submission to absolute. Properly this characteristic conditioned the culturally-state construction of Great Russian but it also mentally pushed off the Ukrainians. This is one of the differences of Ukrainian mentality and the Russian one.

The mentality of Ukrainian people that was formed on generous hump humus, in climatic and geographical environment favourable for life on the contrary is characterized by individualism combined with the idea of equality, respect to the individual and his freedom, acute imperception of despotism and absolute monarch power. Accordingly the Ukrainian people's mentality is typical for so called talasocratic type (the supremacy of individualism over collectivism, the dominance of matrimonial relations with corresponding traditions of law supremacy).

Thus the humanistic potential of Ukrainian legal system has deep traditional roots and is not fully used. Especially taking into account the context of European law functioning. The possibility of such usage will appear subject to authorized entering of Ukraine into European community.

UDC 34(477) (091) (063)

Iryna Muzyka, *Candidate of Science (Law), Senior Researcher of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

THE SOCIOLOGICAL CONCEPT OF LAW Y. S. GAMBAROV

Gives interpretation of the features and characteristics of the sociological concept of law, which was established in the late XIX – early XX c. known legal scholar, sociologist S. Gambarov. Disclosed scientific views on the subject of legal science, the origins of law and the system of sources of law, the methods of legal science. The right has such important characteristics as strong-willed character and normativity.

Scientist have shown that the limits of law, morality and ethics are constantly changing under the influence of different social, economic, political and other circumstances. The content of the right set at "a priori", but empirically, because the right is part of the spiritual and cultural life of humanity.

The Law cannot be properly understood unless right is considered in constant communication with all the cultural and economic relations of different times.

The Law not to be something existing in itself or different from social life. The Law is the only regulator of life, inseparable from it as a form of its content. The Law finds its expression in primitive forms of organizations, in the law, in the public consciousness sanctions and in sanctions of coercion.

Gambarov has created an original sociological concept of law that has the following features:

The Law is seen as a dynamic social phenomenon, part of the cultural life of society. The Law is realized in legal, justice, subjective rights and legal decisions.

Scientist delineated the concept of "law and order", the focus moves from the abstract and "immutable" of laws in the plane dynamic development and operation of law, its implementation in public relations and legal decisions. Concept of law is not limited to the existing norms and historical traditions. The right focuses on the interests and needs of modern society, taking into account its development trends.

The scientist considered sources of law: legal precedent, law, regulation contract, doctrine, legal consciousness, justice and the needs of economic and social life, navychrb and customs, intellectual and moral ideas that prevail at a given time.

Binding force of legal rules has the following reason: legislation, common law, legal practice and contract.

Factors of Lawtmaking is a condition of society. Legal activities is one of the most important factors for Lawmaking, but not source of law in the technical sense of the word.

Sociological (observation, interviews, etc.) and comparative historical methods recognized as important and necessary methods of studying law.

The rules of law enshrined in law recognized only a part of a real legal order of human society and not identified with the law, which exists in public relations.

The legitimacy or illegitimacy of the law is defined by society and does not depend on the will of the specific subject rulemaking.

UDC 340.1

Tetiana Tarahonych, *Candidate of Science (Law), Senior Researcher of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

TYPES OF LEGAL REGULATION: THEORETICAL ASPECTS OF UNDERSTANDING

Main approaches to understanding such important categories of legal science as "regulation", "legal regulation" are characterized in this article. Connection of legal regulation and self-regulation is analyzed.

Criteria for classification of types of legal regulation are highlighted on both general theoretical and methodological levels.

Usage of phenomenological approach has given ability to understand term "regulation" more clearly.

It has been established, that regulation is process, which has particular structure, including: methods of regulation of subject, which has abilities and coercive power in regulation, circumstances, which lead to such type of activity, subject of regulation (economic, political, social, cultural etc. relationships, which need to be regulated), aim, goals and result, which behavior of subject with coercive power is aimed to, and legal facts, which predetermine regulative process.

During analysis of regulation category, author has characterized correlation of regulation and self-regulation.

Self-regulation has been defined as sphere of activity of subjects, whose activity has legal nature, but not connected with specific legal regulation and doesn't need it.

Definition and specific features of statutory and individual legal regulation is characterized. Author highlights that statutory regulation is the result of generalization and typification of individual behavior of the subjects; it should provide unified order and stability in regulation of public relations by dint of passing of statutory acts and other sources of law.

Author highlights specific features of statutory regulation, such as: it defines the rules of conduct through the system of methods and mechanisms; it has been caused by demands of social life, level of social awareness and values, which has been formed inside; spreads its influence on indefinite number of cases; has high level of normative generalizations and aimed to provide order and stability in society.

Individual regulation is analyzed as method of realization of stator regulation by dint of its implementation to life's circumstances.

Specific features, which characterize individual regulation has been highlighted, such as: it's method of realization of constitutive regulation by its implementation to real circumstances, has single-use and subjective nature, aimed to particular situation or subject, uses system of individual methods of regulation, which forms its mechanism, there is broad spectrum of subjects who practice individual regulation (governmental bodies, organizations, authorized representatives etc.).

UDC 930.253(477.83):94(477.8)”15/17”

Vadym Bondaruk, *postgraduate student of the Koretsky Institute of state and law of National Academy of Sciences of Ukraine*

PROVIDING DEGREE OF “PUBLIC NOTARIES” IN ZAMOYSKI ACADEMY (1594–1784)

History of notariate reaches the depths of centuries and is closely connected to the history of Roman law. In Rome begins forming the western-european paradigm of notaries and there are the first organs that executed notarial functions. Along with the clerk, who had some legal knowledge about the III BCE. appears a separate class of free people – tabelions which, without being in the public service, were engaged in drafting legal acts like freelancers. Exactly this institute of Roman law was the germ of the notariate, which along with the Roman substantive law was adopted by European nations.

Along with institution of tabelions, which developed on the basis of secular law, in the field of Christian church emerged analogous institution – notaries, which were attributed to the rank of public office and approved by spiritual power. Since that time we first encounter with the term of the institution of public notary.

The next stage of notariate associated with the development of universities and the development of legal education. First of all, it is about Italian universities, where under Legal disciplines taught “case of record documents”. A true renaissance of Roman law and its reception researchers associated with the formation school of the glossators in University of Bologna in the XI sentury.

On the territory of the Kingdom of Poland and Rzeczpospolita, which during the XV–XVII century included and Ukrainian lands, phenomenon of public notariate was known since the XIV century. Public notariate – a legal institution, notaries were authorized by the secular and sometimes church authorities, produce and certify legal documents, giving them a public force.

Certain changes in the process of training and appointment of public notaries on these territories occurred with the receipt October 29, 1594 by Jan Zamoyski (founder of the Academy in its own name) – Bull of Pope Clemens VIII establishing Zamoyski Academy. According to this Bull Academy was given the right to grant doctoral degrees in philosophy, law and medicine and the right to grant degrees public notaries.

Degree of notary in contrast the other two levels – bachelor and doctorate, wasn’t given on the basis of the course but on the basis of special examinations, which taking only for lawyers. Such examinations didn’t provide the acquisition of scientific degree, and actually gave the right to public service. Thus, information about the first such examination after which students Grokhovskiy Stanislaw (Stanisław Grochowski) i Wojciech Moldorfyusov (Wojciechow Mołdorfiusow) have got degree of notaries in academy dating to 1607. According to the calculations of researcher A. Janik during 1607–1767 years the degree of notaries have got about 115 people.

According to the “Notaries public approval method” (Modus promovendorum notariorum publicorum) that was used in Zamoyski Academy from the 1658 year, the term notary determined such an official (authorized by the Pope through universities and academies) that had public trust and engaged in rewriting cases (acts) by giving them appropriate form and providing long duration (the ability to store in a special locker) thus creating the possibility of transferring them for posterity.

Although “Zamoyski notaries” have not changed legal principles the Rzeczpospolita but they apparently joined the development of law and growth of legal culture.

UDC 34 (091)/348

Kateryna Gubar, *postgraduate student of the Koretsky Institute of state and law of National Academy of Sciences of Ukraine*

DEVELOPMENT OF CHURCH LAW IN THE EDUCATIONAL PROCESS OF THE KYIV-MOHYLA ACADEMY AND KYIV THEOLOGICAL ACADEMY (XVIII – EARLY XX)

The analysis of the educational process at the Kyiv-Mohyla Academy from its foundation to becoming Kyiv Theological Academy. Set the time and order of implementation science of canon law in system of teaching at the Academy. Analyzed place canon law among other sciences, given the material for teaching canon law at the Kyiv-Mohyla Academy. the role of R. Zaborowski, who introducing new changes in teaching science and learning process of Academy. He was the first who included the new discipline in to academic courses – canon law. Attention is focused on F. Prokopovich, which offers a Spiritual rules attached to the educational process of teaching Puffendorf's politics. Defined the state of the teaching of canon law at the Kyiv-Mohyla Academy. Identified changes in title and content of the above mentioned science at all stages of development, from canon law to ecclesiastical law.

After the close of Kyiv-Mohyla Academy in 1817, the analysed of the teaching canon law in the open in its place in 1819 Kyiv Theological Academy. Specified the time to introduce the teaching of canon law in the new Kyiv Theological Academy. Attention is focused on the figure of I. M. Skvortsov, who created the first program in the Russian Empire ecclesiastical law teaching in higher education.

Characterized professors programs teaching church law and canon law in the Kyiv Theological Academy, who taught its science. We investigate contribution in the formation system of teaching ecclesiastical law of professors teaching canon law at the Academy. Browse curriculum is based on archival material. Analyzed individual professors work of the canon law. Served contents of professors teaching programs canon law at the Kyiv Theological Academy. We point out the differences and similarities in the each system of teaching canon law of professors. There are some details of the students' notes of the Kyiv Theological Academy, about the program F. Mishchenko. Submitted overall view of the system of teaching canon and ecclesiastical law at the Academy.

Is carried a review and analysis information on the possibility of introducing civil law to the Theological Academy, proposed by V. Askochensky. Also we given the information that served argument against a decision on this matter.

Served brief biographical information about the professors: F. Prokorovych, R. Zaborowski, I. Skvortsov, P. Lashkaryov, F. Titov, F. Mishchenko, who taught ecclesiastical law at the Academy.

Is carried a review gradual stages of implementation science of ecclesiastical law in the educational process to the first Kyiv-Mohyla Academy, then in the Kyiv Theological Academy. Points to the differences in the form and content of teaching ecclesiastical law in the two academies. Analyzed the development and transformation of ecclesiastical law from the XVIII until 1919. We give the information on the abolition teaching of theology and ecclesiastical law in higher education.

UDC 343.137 (091)

Olga Dubovik, *applicant of the Taras Shevchenko National University of Kyiv*

RESTORATIVE JUSTICE: DEVELOPMENT OF SCIENTIFIC THOUGHT IN 70–90 YEARS OF THE 20TH CENTURY

The concept of restorative justice has acquired international significance in the last decade, because it was a series of steps towards its implementation both in Europe and the whole world.

Over the 70–90 years of the 20th century, there was a significant development of the definition of restorative justice which reflected the views of specific practitioners and theorists, and there was a shift of emphasis from the procedure itself to the outcome.

The results of the recent theoretical and practical studies show that the introduction of restorative justice programs will help the criminal justice better cope with performance of its tasks in areas related to meeting the needs of victims, increase of offender's accountability for his/her actions, reduction of recidivism and fear of crime in community.

The restorative justice provides for the active involvement of victims, offenders and others affected by the criminal acts of the public in the process of justice. Finally, the recovery process is not aimed at punishment, but at settlement of relationships, restoration of good order in the community and reintegration of offenders into society for the prevention of offenses in the future.

Since the 1980s, a number of international documents somehow related to the use of alternative justice in criminal cases have been adopted. They include Karakas Declaration adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its Resolution No. 5/171 of December 15, 1980, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly on November 29, 1985, Standard Minimum Rules for the United Nations concerning the Administration of Juvenile Justice ("The Beijing Rules") etc. According to these regulations, restorative justice should be regarded as part of the criminal justice system, be a method to prevent crime and prevent further crimes, direct its effect on the compensation of damage caused by crime and maximum recovery of state (physical, psychological) that existed before the crime.

In 1999, the Council of Europe adopted Recommendation (R19\99) on mediation in criminal cases to assist member-states in the mediation organization and further development. In July 2002, Social Council of the United Nations adopted the Resolution on the Basic Principles of the Use of Restorative Justice Programs in Criminal Cases. It called the member states of the organization for elaboration of strategies and policies for the development of restorative justice. According to the Resolution, restorative justice can be used at any stage of the criminal justice system in accordance with the national law. It should be noted that the regulations of the Council of Europe are an essential foundation for the restorative justice implementation and regulation and largely complementary to the international regulations in this field.

The integration of Ukraine into the global and European community requires our country to adapt the national legislation to international standards and obligations. This is especially true of the criminal process which promotes the protection of important constitutional rights, freedoms and interests of citizens, taking into account the realities of Ukrainian society.

UDC 343.3.7

Paul Eder, *postgraduate student of Ivan Franko National University of L'viv*

THE STRUCTURE AND MANAGEMENT OF THE HIGHER REGIONAL COURT IN LVIV (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 competense 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 34(091); 340.15; 341(091); 340.130

Yevhen Rominskyi, *research associate of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

ON THE PROBLEM OF CORRELATION BETWEEN INTERNATIONAL AND PRINCELY TREATIES (X–XIV CENTURY)

The study is dedicated to the problem of correlation between such kinds of medieval Old-Russian treaties as princely and international treaties. Traditionally the historical science and legal history view these kinds of treaties either as separate kinds or as varieties of princely treaties, whereas in the history of international law there is a not less widespread view of princely treaties as one of sub-types of international treaties of Kievan Rus. The author gives a review of scientific literature and analyzes the role of historiography in the study of the problem. The result of such work was the

acknowledgement of the fact that in the past researchers haven't made comparisons of these types of treaties to determine their identity or difference.

To evaluate the likeness and difference between the abovementioned kinds of treaties each of them was broken up into several types according to the sort of relations that it regulated. For princely these types are as follows: 1) treaties with norms that were valid in the whole Old Rus territory (or in the whole territory of the relevant principality) and established the rules compulsory for all (widespread name of the time – "na ustroyenye miru"); 2) treaties that established the terms of the princely coregency ("duumvirates" and "triumvirates"); 3) treaties between "elder" and "younger" princes that regulated the amount of authority of the parties; 4) treaties about occupation or inheritance of the throne (which includes treaties securing the rights of inheritance of the descendants of the princes); 5) peace treaties; 6) treaties about military support and political alliances. At the same time the following types of international treaties are characteristic for the princely era of the Old Rus: 1) trade treaties that also included questions of the legal status of foreigners; 2) affirmative treaties ("po staroy poshlinye"); 3) peace treaties; 4) treaties of alliance, including vassal treaties and treaties securing the rights of inheritance of the descendants of the parties; 5) treaties about military support.

Through comparison of separate types of treaties of both kinds it was determined that in most of cases their regulation objects are similar and differ – even though not always – only through the line-up of parties. Not rare are cases when the parties of princely and international relations are mixed within one treaty.

At the same time the differences between these two kinds of treaties became more distinct. So, for example, there were no trade treaties or treaties about the status of the subjects between Old Rus principalities. It originated from the very nature of perception of the whole Rus as a united country, a unified area. Another specific feature derives from this – as of today we don't know any international treaties that contain norms regulating the all-Russian or regional problems of state structure. The sources allow us to say that this role completely belonged to the princely treaties "na stroyenye miru". Foreign rulers were not viewed as a part of Rus, since they ruled not in Rus.

As a result we can affirm that the existing sources give us no reasons to believe that any profound differences were seen between international and princely treaties within the legal consciousness of Kievan Rus. We should rather talk about the possibility to mark out two quite separate groups of treaties from the total amount of princely treaties: international trade and affirmative treaties and all-Russian and zemsky (regional) treaties "na ustroyenye miru". Other treaties usually don't have any other specific features for division into princely and international treaties, apart from the parties that concluded them.

UDC 321 (091); 340 (091); 342 (092)

Lesia Hudoyar, *applicant of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

THE HISTORY OF ADMINISTRATIVE PROCESS IN ZAPORIZHZHYA SICH: ON MATERIALS OF NEW ZAPORIZHZHYA SICH

The features and characteristics of the administrative process in the Zaporozhzhya Sich. The comparative analysis of the meaning of "administrative process" in the modern theory of administrative law and legal concepts Cossacks. The peculiarities of the legal regulation of the administrative process in the Zaporozhzhya Sich, the circle of entities authorized to process administrative in Zaporozhzhya Sich, defined category of legal cases that were conducted during the administrative proceedings in the Zaporozhzhya Sich, highlights the types of administrative acts and specific administrative process in Sich.

Legal consciousness which was based on the idea of Cossacks of justice and moral values was the basis for making administrative decisions.

Military-administrative and executive power in Zaporozhzhya Sich not separated from the judiciary. Therefore, trial in the civil and criminal proceedings and examination of the various complaints and examination of the appeals largely be characterized as an administrative process. Decisions taken as a result of this trial, had the character of administrative acts.

Legal acts of the Zaporozhzhya Sich include norms both material and procedural law, individual dictates and regulations, "model" of specific decisions and individual rules of conduct.

An attempt to characterize the nature and extent of ordering regulatory framework to govern the administrative process that was the main type of legal activity in the current Host.

The peculiarities of the legal regulation of the administrative process in the Zaporozhzhya Sich, defined category of legal cases that were conducted during the administrative proceedings in the Zaporozhzhya Sich, highlights the types of administrative acts in Sich.

The administrative process in the Zaporozhzhya Sich characterized as domineering function of the law enforcement and executive and administrative activities of public authorities, officials, other authorized entities, which was making proceedings to review and resolve specific individual cases in order to achieve pre-planned results.

The positive side of the administrative process in the Zaporozhzhya Sich can call it democracy and the absence of etatist traditions. The downside was the low level of order because there was no clear systematic legal framework for regulating this type of legal action. Administrative procedures and administrative jurisdiction were types of administrative process.

The specific of the administrative process in the Zaporozhzhya Sich reflects its structure, which is a collection of separate proceedings which have as jurisdictional and have not jurisdictional character.

UDC 340.1

Natalia Chervinska, *applicant of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

THE ROLE AND IMPORTANCE OF THE LEGAL MENTALITY TO ENSURE THE EFFECTIVENESS OF THE LEGISLATION

The article is an analysis of the meaning and role of the legal mentality to ensure the effectiveness of legislation, the peculiarities of its impact on the effectiveness of the law and determined by the "nature" due "legal mentality – the effectiveness of the law".

Since, in the present conditions the problem of efficiency legislation appears to the public clearly, the interest in the legal mentality seems naturally caused the requirements of real life. Ignoring the impact on the effectiveness of legislation mentality leads to destabilization of the political and legal systems, exclusion of citizens from laws, institutions of government and state.

It is emphasized that the legal mentality should be considered as one of the important conditions for further development of the legal system, civil society and legal state building and strengthening the public mind the rule of law, priority rights and freedoms and civil rights, rule of law, judicial independence and conquer it alone law effectively combat corruption and crime.

After analyzing the approaches to the definition of "legal mentality," concluded that the main features of the legal mentality should be considered: it belongs to the sphere of consciousness; duration of the process of its formation; this phenomenon is stable, sustainable and durable.

Determined that the very nature of this phenomenon largely determines its importance for effective public perception of the law, in contrast, for example, of justice, because there is no simple relation to legislation that is often spontaneous, inspired by certain current (economic, political) conditions, and the impact of the most common beliefs that express a stable, relatively equal (historically confirmed) attitude to the law, and therefore does not require other approvals in terms of efficiency.

The primary interest to attract national legal mentality it represents the scope of legislation, the efficiency of which further depends on the effectiveness of legislation. This approach, in my opinion, will reconcile the two components of the study – law mentality and effectiveness of legislation. Moreover, taking into account the nature of the phenomenon, the relationship between them is very obvious.

It is at the stage of lawmaking are largely laid the foundations for further efficiency legislation. The following stages regulation is directly related to quality content, a critical aspect of the inclusion of mental factors.

It was concluded that between efficiency legislation and legal mentality exists very close relationship. On the one hand, in view of the above signs mentality, that it can promote stability, relevance, accessibility of current legislation, leading to its effectiveness as a whole. On the other – the effectiveness of the legislation is an indicator of its high level of its real feasibility, which in turn promotes citizens' confidence, produces a positive attitude to the law, faith in his justice; guarantee the rights and freedoms of man and citizen.

The information comes from the mental attitudes of society, the legal system is perceived as a signal acquires legal registration or ignored as something that is beyond the scope of regulation, is legally neutral. The result of inadequate perception of the legal system of such information may be reducing the effectiveness of legislation and as a consequence – loss of confidence in the mechanism of regulation of social relations, which in turn will reduce the level of legal culture, violations of the rule of law.

UDC 340.1; 342.01; 342.5

Olexander Batanov, *Doctor of Science (Law), Professor, Senior Researcher of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

THE PROBLEMS OF THEORY OF THE FUNCTIONS OF A MUNICIPAL LAW

In article problems of the theory of functions of a modern Municipal Law are considered. The basic essential and meaningful, objective and subjective, internal and external aspects of modern Municipal Law. It is noted that among the basic tasks that are currently faced domestic science Municipal Law, is the formation of a coherent and comprehensive knowledge of the system of municipal law of Ukraine, its legal aspects and patterns of development and operation of its norms and institutions. A holistic conception of the Municipal Law of Ukraine in the unity of its static and functional, material and procedural elements are important theoretical and methodological basis for the development and improvement of the system of national municipalism, current municipal legislation and municipal law-making and law enforcement activities.

However, if the theory of problematic issues of Municipal Law as in law, its genesis, sources, norms and institutions are reflected in the works of ukrainian researchers, the problem functions of this area of law remains almost unexplored. Understanding the nature and content of the functions of Municipal Law makes it possible to understand the importance of this area of law to regulate social relations and answer questions about the role of Municipal Law in society and the state.

Characteristic signs of functions of a Municipal Law are analyzed. Definition of concept of functions of a modern Municipal Law as main directions and types of influence of a Municipal Law on social relations that arise in the process of recognition, formation, organization and implementation of municipal authorities, as well as the realization and protection of rights of the individual municipalities.

Summarizing doctrinal approaches taken in the theory of state and law, as well as some branch of law, including the science of Municipal Law, it can be concluded that the functions of Municipal Law as a branch of legal rights inherent features that reveal the nature and content of this category, including they are:

– Express the nature and content of this branch of law and its purpose in society and the state, and place in the legal system;

– An active way of law, resulting in the formation, amendment and termination of relationships that are the subject of municipal legal regulation;

– With the objective nature is, on the one hand, a form of purposeful volitional conduct or activities of Municipal Law, and, on the other hand, the legal conditions that give rise to municipal rights and obligations of participants in these relations;

– There are fields and types of action on Municipal Law of targeting social relations;

– Directly related to the system of Municipal Law as in law, its rules and institutions, forming a stable system-functional, structural and genetic relationships that characterize the static and dynamic properties of the material and procedural Municipal Law;

– Are in synergy with sustainable sources of Municipal Law as areas of law that are external form of objectification main strategic directions and types of its impact on social relations;

– Directly affect Municipal Law relations and their properties, the subject-object structure, life circumstances (municipal legal facts) that generate, modify and terminate Municipal Law relations and determine their content;

– Are in organic connection with the functions of Municipal Law as legal science and discipline objectively affecting the implementation of research and learning, to address assigned to the municipal legal science and education goals;

– Associated with the basic functions of the state.

UDC 342.25

Khrystyna Prykhodko, *Doctor of Science (Law), Associate Professor, Prime advisor at Legislation Institute of Verkhovna Rada of Ukraine*

DECENTRALIZATION OF PUBLIC AUTHORITIES AND LOCAL GOVERNMENT: CONCEPTUAL AND LEGAL ISSUES

In the article, the doctrinal and practical approaches to public and legal justification and further implementation of the national concept of decentralization are studied. The author supports the idea of decentralization, which does not mean just the demarcation of powers, but primarily deals with the responsibility of the central, regional and municipal levels of public authority. The legal principles of public power decentralization, enshrined in the Concept of local government reformation and territorial organization of power from June 1, 2014 are highlighted. The author emphasizes certain problems of this concept implementation. In particular, there is a problematic issue of balanced participation of public and administrative, local and state resources in the mechanisms of this concept implementation.

UDC 342

Volodymyr Antonov, *Candidate of Science (Philosophy), Associate Professor, Senior Researcher of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

NATIONAL SECURITY AS CONSTITUTIONAL AND LEGAL GUARANTEE OF UKRAINE'S POLITICAL SYSTEM

The process of the emergence and strengthening Ukrainian state is primarily due to issues of national security and defense. It is clear today is that the continued existence, self-sufficiency and economic development of Ukraine as a sovereign, democratic, social and rule of law depends on national implementation aimed domestic and foreign policy on the protection of the interests of the state, society and individuals. We are talking about the creation of a national security system that allows it to ensure protection of vital interests of the state (its constitutional order, sovereignty, territorial integrity and inviolability of frontiers), society (its material and spiritual values) and individual (his rights and freedoms) from internal and external threats.

With given large scale and complex problems caused by the Russian military aggression against the Ukrainian state to protect its national interests should be based on the understanding that Russia

is against Ukraine total war, war of attrition Ukrainian state, the Ukrainian nation and lead it even after suspension of military force, continuing humanitarian aggression aimed at destroying Ukraine itself states "peaceful" means. It should be noted that in the future will remain real and prospects of new military threats by the Ukrainian State Russian Federation. Because the content of anti-Ukrainian ideology of Russian foreign policy and defines its strategic goals, which provides total destruction of Ukraine as a subject of international law and geopolitical reality.

In this context, particularly important issues related to the consideration of national security as a constitutional and legal guarantees of the political system of the Ukrainian state. At this aspect should be noted that Ukraine's political system is a set of public and private social institutions that exercise political power, social control, regulate relations between citizens, social and ethnic groups, ensure stability Ukrainian society relative order in it. The political system of the Ukrainian state characterized by some features, such as: it reflects the most relevant aspects of the economic system of the Ukrainian state; determines the content and source of government approval of the carrier; enshrines in law the principles of the institutions of political power and their orientation; laying the constitutional and legal framework in the system of national security and defense of the Ukrainian state; defines the principles of its domestic and foreign policy.

Perceiving Reality inherent in modern Ukraine's political system and considering national security as a constitutional and legal guarantees to ensure it is necessary to pay attention to several important aspects. In particular, it must be emphasized that from a methodological point of view, the centerpiece of the entire political system of Ukraine while its derivative genetic structure of a State. Since that time, there is a political system and, in fact, social life centers around the state. The state is the resistance of the current political system of society, it concentrates in a maximum power authorizes the existence of all other non-governmental institutions. Speaking of element, being the main institution, the state is the very essence of the social system, its nature, its organizing principle, in fact it is the core of the entire political system.

Based on these theoretical and methodological grounds there is an urgent need to consider first of all the national security as a constitutional and legal guarantees of protection is functioning state. So cent. 17 of the Constitution of Ukraine stipulates that the defense of Ukraine, the protection of the sovereignty, territorial integrity and security is a matter of the Ukrainian people.

UDC 342.722

Oksana Vasylchenko, *Candidate of Science (Law), Associate Professor of the Taras Shevchenko National University of Kyiv*

THE ESSENCE OF THE PRINCIPLE OF EQUALITY OF RIGHTS AND FREEDOMS OF NATIONAL MINORITIES

The principle of equality of rights and freedoms of man and citizen is evident not only at the level of each individual, but also at the level of certain groups of people. As every citizen is equal in relation to another citizen, as various national minorities are equal. State, providing the principle of equality of rights and freedoms for all members of society, can not give preference to one of the national minorities. Establishing identical in content and scope of the rights and freedoms for all, without exception, of national minorities in line with international standards and European practice.

When we analyzing the various specialized programs for the rights of national minorities in Ukraine certain positive aspect stands the fact that over the creation of each program worked not only government representatives, but also representatives of national minorities. In addition, the study of the content of these documents revealed the identity of their content, indicating the uniqueness of each program. In our opinion, this practice should continue. It is helpful to develop programs for national minorities at national and regional levels, that is, with respect to areas that are not part of one territorial unit (since there are national minorities living in the territory of several areas, etc.).

It was noted that the provision of the principle of equality of rights and freedoms of national minorities does not provide equal costs for each of them. On the contrary, the selection of identical amounts of funds for the development of each national minority would give advantages to some minorities and narrowed the rights and freedoms of others. National minorities are quite different: compact are within one area or another – representatives spread across different regions, etc.; that is, they are different not only in the number of people, but also on the territory of residence. Allocation of a certain amount in favor of national minorities live compactly and allocation of the same amount in favor of national minorities living compactly certainly not entail unequal financial support of their activities (subject to the same number of persons, including minorities). The state's role should not be reduced to equal rights and freedoms of national minorities, application of the same approaches and interventions. We see the role of the state in ensuring the principle of equality of rights and freedoms of national minorities in Ukraine in an individual approach to solving the problems of each national minority. Given the characteristics of each national minority, while ensuring the principle of equality of rights and freedoms of these subjects there is a very fine line. The state not only does not prevent the development of national minorities, but also contributes to this.

The authors concluded that the essence of the principle of equality of rights and freedoms of national minorities is to: 1) the possibility of members of national minorities realize their political, social, economic, civil and cultural rights and freedoms on an equal basis with other nationalities; 2) ability to protect the rights and freedoms in case of violation or threat of assault, includes free election and application forms and ways of protecting these rights; 3) the distribution of the opportunities for all minorities, regardless of their characteristics, including the number of people and territory of residence; 4) the provision of all national minorities equally these possibilities, ie the sameness of their scope and content for all; 5) set the real legal mechanism to ensure these opportunities the state both individually and in their relationship.

UDC 342. 7

Valerii Shapoval, *Candidate of Science (Law), Associate Professor, Head of Department of the Kremenchuk Mykhailo Ostrogradskyi National University*

GENERAL DESCRIPTION OF CITIZENS' RIGHTS TO LEGAL ASSISTANCE IN UKRAINE

Among other problems to the Ukrainian people one of the most critical problem is the implementation of human and civil rights. According to scientists's opinion Constitution deals with rights, freedoms and duties of a man and citizen in Ukraine in order to fully realize the rights and freedoms and responsibilities need to know them.

It is generally accepted that the right and freedom is guaranteed by applicable law type and extent of possible human behavior and civil society and the state.

Problems of our investigational right to legal assistance, its social purpose in society, in our opinion is one of the most important problems of social and cultural development of the Ukrainian society.

Nowadays, the problem of the right of citizens in the Ukrainian study on legal assistance is very important. The reason is that local legislators actively and successfully apply scientific development.

In implementation and protection of the rights and freedoms of a man and citizen in Ukraine as a democratic state of law there is given the person's right to legal assistance as provided in Article 59 of the Constitution of Ukraine. This right is one of the inalienable rights of a man.

Having proclaimed on August 24, 1991 its Independence, Ukraine is on the path of development and a truly sovereign and independent country, strictly focusing on the recognition of the democratic and humanistic in its content and direction of international standards.

During the creation and development of their own state, there are significant changes in the economic, political and social orientations in society. They are formed their own political institutions, national legislation and so on.

UDC 342.71(477)

Vadym Bosyi, *the judge of the Economic court of Kyiv*

FEATURES OF THE ACQUISITION OF UKRAINIAN CITIZENSHIP BY REFUGEES

The article dwells upon the analysis of theoretical and legal aspects of the acquisition of Ukrainian citizenship by refugees with the justification for proposals for its improvement.

Attention is given to the significance of the acquisition of Ukrainian citizenship by the refugees. It is stated that the optimal solution of the refugee problem is to return to their country of nationality or the previous residence. However, for most people who are granted the refugee status in Ukraine, such return is impossible due to the complex political situation in their countries. This actualizes granting the Ukrainian citizenship to refugees for their successful integration into Ukrainian society. The Conception of state migration policy, approved by the Decree of the President of Ukraine dated May 30, 2011 № 622, provides for the accomplishment of measures related to the integration into Ukrainian society of foreigners and stateless persons who are granted the refugee status in Ukraine.

It is paid attention to a solution of the problem concerning legislative provision of the acquisition of Ukrainian citizenship by refugees requires a proper scientific support. At the same time this question is studied insufficiently in the domestic constitutional and legal literature. Some its aspects were considered by M. Surzhinsky, S. Chehovich, O. Ogurtsov. However, the particular characteristics of conditions of the acquisition of Ukrainian citizenship by refugees were studied insufficiently.

The paper studies the process of formation of national legislation on this issue in accordance with international obligations. It is substantiated a conclusion that the national legislation fixing the conditions for the acquisition of Ukrainian citizenship didn't take into account the peculiarities of the legal status of refugees for a long period. The Ukrainian legislation on questions of citizenship doesn't even use the term "refugee". At the same time, it provides for the possibility of acquiring the citizenship of Ukraine for a particular category of people – the political refugees.

It is emphasized that the refugees have the general conditions for the acquisition of citizenship, to perform some of which they had no opportunities. These conditions include: the absence of foreign citizenship or cancellation hereof; the presence of legitimate livelihoods; permanent residence in the territory of Ukraine for five years.

It was particularly noted the importance for the improvement of national legislation on citizenship, the preparation of our country to accede to the Convention relating to the Status of Refugees.

It is stated that the Law of Ukraine "On Citizenship of Ukraine" dated January 18, 2001 takes into account the peculiarities of the legal status of refugees and secures the simplified conditions for the acquisition of Ukrainian citizenship. An important innovation of this law was that the refugees-foreigners are not required to file an obligation to terminate foreign citizenship to acquire the Ukrainian citizenship. Instead, they have to submit a declaration of renunciation of foreign citizenship.

It is noted that the standard for the submission of a declaration of renunciation of foreign state shall not apply to persons who are granted the refugee status in other countries.

It is directed attention that the law provides for the simplification of the other terms of the reception into the citizenship of Ukrainian state for refugees. They don't have to receive a permission to immigrate; they are not subject to the terms on the presence of legitimate livelihoods. Finally, the

refugees have the continuous three-year period of residence on the territory of Ukraine set from the date of granting the refugee status.

It is emphasized that the right to acquire the citizenship of Ukraine by birth depends on the status of the person's parents, the legality and character of their residence in Ukraine, the birthplace of the person.

It is stated that an important procedural innovation of the capability to acquire the Ukrainian citizenship by refugees is that the current legislation requires no longer the refugee submits an application for registration or acquisition of the Ukrainian citizenship at the place of permanent residence of the person. The refugees shall submit applications and other documents on citizenship issues to migration service at the place of registration of the person.

It is formulated the conclusion that having improved legislation on citizenship our state has created the necessary legal basis for the settlement of a problem regarding the acquisition of Ukrainian citizenship by refugees.

There were substantiated proposals for further improvement of national legislation on the issue under study.

UDC 346.5 : 342.951 (477)

Svitlana Bevz, *Candidate of Science (Law), Associate Professor, Dean of the law faculty of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

OBJECTIVE OF STATE REGULATION OF BUSINESS ACTIVITY: EXAMINATION OF ISSUES

Current situation in business activity makes actual a question of its interaction with state bodies and, first of all, it arises from state regulation of business activity. Defining an objective of this regulation will support the execution of the state functions that aimed to reach this goal. In such case state bodies function according to the Constitution and laws of Ukraine. Basing on the analysis of provisions of laws of Ukraine and definitions of specific categories in academic literature we suggest an approach to the concept of state regulation of business activity.

By reference to definitions of state regulation, state regulation of economics and/or business activity, the specific result of such regulation that should be obtained, is not determined in research literature. Indicated targets are tasks which have to be done in the process of regulation by state.

The purpose of state regulation of business activity is indirectly specified in laws of Ukraine, particularly, the Constitution and the Commercial Code of Ukraine.

Comparison of respective provisions of these laws and their interpretation basing on other laws of Ukraine suggests that the purpose of state regulation of business is confined to two following provisions: securing of socially oriented economy and establishing legal order in business. Based on subsequent analysis establishing legal order in business might be defined as the main objective of state regulation of business activity; its achieving assumes existence of, particularly, socially oriented economy.

Considering that approximation of public and private interests is one of the most important factors of civic business order, the article contains definitions of definitions “public interest” and “private interest”.

On this basis, it is concluded that the provision of socially oriented economy can be defined as a public interest that is satisfied during the establishing legal order in business. State regulation of business activity should be aimed at meeting the public interest without conflict with the interests of private entities. Here with interest of private entities is a goal that is achieved with sufficient satisfaction of public interest.

During ensuring balance between public and private interests, it is possible to speak about effective government regulation of business activity. A clear statement of purpose of state regulation of business activity and the understanding of its nature will determine the necessary functions of the state to achieve, proper implementation of which will increase efficiency and state regulation of business activity as the direction of the state.

UDC 351.72(477)

Tamara Gubanova, *Candidate of Science (Law), Principal of the Private institute of higher education " Financial Law College"*

OPTIMIZATION AS A WAY TO IMPROVE THE EFFICIENCY OF UKRAINIAN LEGISLATION IN THE SPHERE OF STATE FINANCIAL CONTROL

This article analyzes the optimization as one of the possible ways to improve the effectiveness of legislation Ukraine state financial control. Based on the analysis of scientific literature, it is concluded that the applicability of this method efficiency legislation on legal regulation of state financial control.

Based on the analysis of scientific literature, the author concludes that one way to improve the efficiency of the legislation of Ukraine state financial control is its optimization. It is reduced to a system of integrated process aimed at improving the existing legal framework by selecting the best among possible, functioning version of the legislation. Thus, optimization of legislation in the field of public financial control will achieve maximum results functioning of this important instrument of state control.

The object of optimization is legislation Ukraine state financial control. However, key benchmarks should be the same aim and object of state financial control. In order to be considered as aspects such as: 1) multi-faceted, complex nature of the legal system; 2) organization and the state financial control involves consideration of internal and external factors, mutual solution of vertical and horizontal management structure of the legislation; 3) objective complexity of the legal system; 4) a significant amount of legislation Ukraine state financial control, its diversity and mainly quantitative, not qualitative in nature and more.

The only way to optimize the legislation of Ukraine state financial control is to create new and improve existing legislation. Therefore, an optimization is such entities that possess the function of rule-making. The leading role is undoubtedly include: the Verkhovna Rada of Ukraine, President of Ukraine and the Cabinet of Ministers of Ukraine.

An integrated approach to optimize the legislation of Ukraine in this area can only be made after a general assessment of the legislation on state financial control, determining the consistency of legislation in this area, evaluation and adaptation harmonization of national legislation with international law and EU legislation and other parameters. In addition, important guidelines that must be taken into account, the principles and objectives of state financial control. Ignoring them during optimization legislation on state financial control will lead to new conflicts, new problems, along with the existing ones.

UDC 342.924

Viktoria Zhydetska, *postgraduate student of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

PLOBLEMATIC ISSUES IN THE APPEAL OF LEGAL ACTS

In the article investigated the issue of predictability of judicial practice in resolving disputes at the appeal of legal acts and featured of the application of the Institute to ensure the claim, complained with the requirements publication of the judgment in this category. Separate issues at the appeal proceedings legal acts investigated domestic and foreign scientists and employees of Justice. Ongoing scientific debate about the extent of court intervention in legislative work in deciding cases of appeal

against legal acts because it refers to the implementation control of norms function and assess incidents. Court declares illegal and cancels the legal act of individual action or the legal act if it contradicts acts of civil law and violates civil rights or interests of individuals.

Predictability and stability of legal relations in society are an important factor in ensuring the protection and guarantees of the rights, freedoms and human interests. Development trends continental law indicate the reception of case law. The principle of legal certainty as part of the rule of law is the idea of foreseeability any entity relationship defined legal consequences (legal result) their behavior, corresponding position in the judgment of the ECHR Brumaresku v. Romania (p. 61). Domestic judicial practice, according to Resolution Plenum of appeal produced no clear criteria for normative acts that the act "does not generate any legal consequences since adoption" or that "the act terminates on the date specified by the court after the adoption of the act". In the context of the invalidity of acts their division into individual legal and normative is crucial, namely the legal act non-compliance with its law should be regarded as worthless, but not as impugned. Problem issues occur in the practice of administrative proceedings in the application institute of securing a claim as part of the right to judicial protection. Given the analysis of court decisions to suspend the normative act according to the Register to take measures to ensure the claim setting different approaches of courts: refusal to satisfy petitions to ensure action – stop the normative act; satisfaction petitions to ensure action – voiding act non-normative nature; reversed a decision to suspend the act in this category, as contrary to the objectives of securing a claim.

Also courts perform differently Procedure law on the obligation to publish announcement on the case at the appeal legal act, including regulatory.

In order to ensure the unity of practice, should be introduced to clarify the Resolution Plenum Higher Administrative Court of Ukraine with regards categories of cases of appeal against legal acts. To ensure the stability of the principle of judicial practice it is advisable to introduce a quality monitoring of the judgment, development and system use evaluating the quality of court. It is important to introduce effective internal export control in the context of state generalization proceedings and appeal court decisions including the possibility of judicial error correction higher judicial authorities and active external in particular public control, including quality assessment administration of justice.

UDC 342.9

Vitalii Korshun, *Head of the Department of Law Department National Bank of Ukraine*

CONCEPT OF ADMINISTRATIVE AND TERRITORIAL DIVISION OF UKRAINE: THEORETICAL FRAMEWORK OF FORMATION AND ESTABLISHMENT BEFORE UKRAINE'S INDEPENDENCE

Main historical events and documents that influenced establishment and development of Ukraine's territorial division, concept of administrative and territorial division, were analyzed. During the different historical periods before independence the territories of our country belonged to Austria, Hungary, Poland, Russia, Moldova, Turkey etc.. At that time, Ukrainian territories had mostly three-level administrative and territorial division and belonged to centralized and mostly unitary state. The analysis of territorial division and system of public authorities, that existed on the Ukrainian historical lands during different periods, allows to confirm that the system of territorial arrangement defined the processes of formation and operation of local authorities.

In this article, the author focuses on determination of the core characteristics of the concept of administrative and territorial division, its place in territorial arrangement of the state; analyses and researches of special features that define administrative and territorial division as an integral system.

In the article, it is highlighted that the issue of territorial arrangement of state authority is a pressing challenge requiring implementation of unity and integrity of Ukraine's territory. This challenge requires justification of advisability of constitutional and legal modernization of the state,

as well as improvement of existing model of state system and territorial division, which, in its turn, requires optimization of administrative and territorial division and of its entities (division of competences and powers, interaction between municipal and state authorities, between state authorities and local governments.

It is stressed in the article that enshrining the institution of administrative and territorial division in the Constitution should be considered as one of the pillars of the constitutional order, although it is not provided for in the respective chapter of the Constitution of Ukraine. The Constitution defines the fundamentals of administrative and territorial division as a special state and legal institution, its place among other state and legal institutions, its meaning and principles; competence of state in setting and changing administrative and territorial division; a list of the most important administrative and territorial units that comprise the state.

UDC 342.9

Julia Livar, *applicant of the V.N. Karazin Kharkiv National University*

THE SUBSTITUTION OF THE ADMINISTRATIVE DISCIPLINARY ACTIONS IN THE PROCEDURE OF DECISION EXECUTION ON THE ADMINISTRATIVE DISCIPLINARY ACTIONS

Modern scientific literature almost doesn't pay attention to the fact that the procedural structure of the execution of certain types of the administrative disciplinary action has a facultative element the essence of which is in the substitution of the administrative disciplinary actions of one type into the administrative disciplinary actions of the other one. The Code of Ukraine on the administrative offences provides for three cases of the administrative disciplinary actions substitution: communal work is substituted by fine; correctional work is substituted by fine; unserved term of communal work can be substituted by fine or administrative arrest.

The grounds for the substitution of the administrative disciplinary actions are disability, conscription, taking into custody, conviction of criminal offence in the form of imprisonment or limitation of freedom, the location of a person is unknown.

The substitution of the administrative disciplinary actions in the form of communal work and correctional work into fine is illogical under such grounds. Under such conditions a person who is the subject of the administrative disciplinary actions loses the source of income and the collection of fines under such conditions is complicated or impossible. In the case of taking into custody or conviction of criminal offence in the form of imprisonment or limitation of freedom, a person loses the possibility to pay fine in the order prescribed by law.

The following substitution scheme is likely to be more correct – in the case of the lack of voluntary fine payment the fine can be substituted by communal work or correctional work. In the first case the fine is compensated by the offender's work, in the second case – the deduction of the certain sums of money takes place without the offender's participation. The substitution of fine by correctional work takes place when the offender has permanent place of work. In the case if the offender doesn't have permanent place of work the substitution of the fine by communal work is the obligatory one.

The substitution of the administrative disciplinary actions must be carried out in the procedural form and the procedure of the execution of the administrative disciplinary action in the form of communal work or correctional work have additional stage – the stage of the substitution of the administrative disciplinary action, that is the administrative procedure of itself, the procedural form of it requires essential improvement.

UDC 347.73

Yevhenia Lytvynova, *applicant of the Dnipropetrovsk State University of Internal Affairs*

THE FINANCIAL PROCEDURE RULES AND THEIR CORRESPONDENCE WITH SUBSTANTIVE RULES OF FINANCIAL LAW

The author put forward and grounded a hypothesis as for existence not only of procedural rules within the finance but a different group of the financial procedure rules, too. The article is devoted to the correspondence between the financial procedure rules and substantive rules of financial law.

Emphasis on an attention is given to identification the special aspects and differences of financial procedure rules from substantive rules of financial law. It was established that substantive rules of financial law governing executive forms of law and procedural rules governing human rights work forms of law.

Procedure points of material and financial law are a requirement condition for realization the series of financial regulatory standards and contacts that exist in the financial legal relation. They are integral from whole standard system of financial rules and substantive law and procedure on the implementing rules of legal standard due to its special form such as administration of law relevant authorities. Each material and procedural bases of financial law appropriate with related regulative reports and is a indispensable condition for its normal realization.

Procedural rules contained in substantive financial regulations should be regarded as special rules respect the rules set forth in procedural law. Procedural laws are under consideration and handling all legal matters. Scope of procedural rules contained in the regulations of the material finance, limited individual institutions outside finance. Special procedural rules contained in the substantive regulations may not only exclude the effect of general rules, but also to specify them.

This proves that in contrast to the procedural arrangements of substantive law, common-law practice has the character of universality, adaptability, provide the realization of statutory liabilities and officiate the procedure on substantive enforcement and (that is more important), the activities of the authorities to protect rights.

UDC 34.07

Oleh Lyashko, *applicant of the Zaporizhzhya National University*

PROVIDING ADMINISTRATIVE SERVICES IN THE FIELD OF URBAN PLANNING: RESULTS OF THE SURVEY

The article analyzes the current state of administrative services in the field of urban development in Ukraine. Courtesy cut the basic regulatory framework governing the provision of administrative services in the urban area. Studied results of a consumer survey of administrative services in the field of urban planning. Courtesy answer to meet customers quality services (including volume rendering speed, the presence of additional mandatory "related" paid services, etc.). One of the results of the survey are defined hierarchy of measures are needed to improve the quality of services provided in urban planning.

City planning taking into account the market value of real estate in Ukraine remains an area of social life, the state regulatory control is "favorable" for further corruption of public administration. Analysis of the types of administrative services provided to entities (individuals and corporations) defines low level of development and some uncertainty regulations providing such services.

Conducting urban development in Ukraine should be aimed at the development of adequate living environment, while ensuring environmental protection, environmental management, cultural heritage preservation and sustainable development of territories based on various public and other interests. The authorities guided by various legal instruments providing administrative services in the field of urban planning within its competence. Meanwhile, given that the legality of town-planning activity affects not only the state of human rights in the safety of human life and health, but also applies to a number of its other rights and interests, updated normative questions to determine the classification of administrative services in this area.

In order to identify ways to optimize the mechanism of administrative services in the field of urban development to individuals and legal entities, as well as the development of optimal ways of reforming these activities were interviewed 132 persons residing in the Dnipropetrovsk region. The survey was conducted in the 2013–2014 biennium.

So, as a result on our poll, it should be noted that at the time in spite of the Law of Ukraine "On Administrative Services" clearly the principles enunciated by him, not fully implemented and is particularly acute in modern conditions of Ukrainian society required the formation of active political will to ensure the functioning of public administration public service type.

UDC 342.9

Sergii Melnik, *applicant of the V.N. Karazin Kharkiv National University*

FACTORS STIPULATING THE DETAILING DEGREE OF THE JUDICIAL FORMS OF THE JURIDICAL LIABILITY FOR ADMINISTRATIVE OFFENCES

The most full of content norms, regulating the relations of the legal liability, in comparison with other branches of law is the administrative law. It is caused by a large number and variety of regulation subjects, and therefore a huge number of sources of legal regulation and the variety of the realization forms of the executive power. Today more than forty laws provide for the usage of various means of legal liability by administrative means, but procedural regulation of the relations of the legal liability differs not only in terms of proceedings structure in appropriate cases, but in terms of different degree of the detailing. Thus the problem of the factors determining arises that influence the detailing degree of the procedural form of the legal liability that is realized by administrative means.

Applying financial sanctions, the extent of which has a maximum and a minimum value, it should be noted that the sanctions impact on the offender was sufficient to achieve the goals of liability, but did not lead to a significant deterioration of his financial condition and activity termination. That is one of the factors, affecting the detailing degree of the procedural form of the legal liability, is the kind of sanctions provided for committing certain offenses and the way of the determination of their specific importance.

The factor that determines the detailing degree of the procedural form of the legal liability is the presence of the circumstances, excluding proceeding in the corresponding case, in the corresponding legal act. By virtue of these provisions the authorized subject must verify the presence or absence of the corresponding circumstances during the trial.

Some laws that establish legal liability by administrative means have the provisions that don't correspond to the conventional notions about the principles of legal liability, in particular the principle of the presumption of innocence. In the majority of the administrative-delict proceedings this principle together with the principle of objectivity stipulates the obligation of the authorized subject to prove guilt of the offender and the presence of all the circumstances of the offense. The structure of the proceedings should provide the element within which the person will present evidence.

Thus, the main factors stipulating the detailing degree of the procedural form of the legal liability in the administrative law are: specific sanctions for committing corresponding offences and the identification of their concrete importance; the presence of the circumstances in the legal act that

exclude the proceedings in the corresponding case; the necessity of taking into account unconventional principles of the proceeding relating to the cases of bringing to account.

UDC 347.962.2

Oksana Safonova, *postgraduate student of the Law Faculty of Kyiv National Economic University named after Vadym Hetman*

NORMATIVE – LEGAL REGULATION OF THE PROCEDURE OF PASSING CANDIDATES FOR THE POSITION OF JUDGE OF THE QUALIFICATION EXAM

Effective functioning of the judiciary as ensuring a professional and fair justice, adequate protection of rights and freedoms and quality of the proceedings interrelated competence and knowledge of the judges considering the case. By reason of unlawful decisions taken in violation of the law is not qualified judges and inadequate professional training of judges in ignorance.

In order to make impossible the adoption of the unlawful decisions of the judges, it is necessary to improve the process of training of judges, to resolve conflicts and gaps between the legal norms that regulate the process of professional training of judges.

According to Art. 70 of the Law "On judicial system and status of judges" qualifying exam is a certification entity, which has passed special training and who wish to be recommended for appointment as judges.

The purpose of the test is an objective assessment of the necessary theoretical and practical knowledge of the candidates in law, their level of training, readiness to administer justice according to the jurisdiction of the appropriate court, as well as their personal and moral qualities.

The examination is conducted by the High qualification Commission of judges of Ukraine by making candidates written anonymous testing (further testing), practical tasks in order to identify the level of practical skills in the application of the law (hereinafter – the practical tasks).

Test questions and answers should be formulated clearly, do not induce variability in their interpretation. Each test question has 4 answer options, among which is completely correct only one.

For forming concrete test to test, which will be the candidates with the help of special software complex with a test database randomly selected 80 test questions, test duration is 180 minutes. That is, for each question, the candidate is 3 minutes and 5 seconds, which is the optimal time to identify the correct answer.

Positive moment processing of exam results is that the analysis of correct answers by using the scan your computer, which has a positive effect on the independence of the evaluation results.

Practical tasks is to solve the applicant offered model case concerning the jurisdiction of the court by drafting a procedural document in the form of solutions (civil and commercial specialization), regulations (administrative specialization), sentence (criminal specialization) on the basis provided for specific source data and in accordance with the qualification requirements.

Practical task runs for two days. To perform practical tasks in the jurisdiction of the appropriate court, each candidate is provided a notebook with model court case, notebook to perform practical tasks, handle black.

Each applicant elects four model court cases: civil, criminal, administrative, and economic specialization of courts of General jurisdiction.

UDC 342.9

Pavlo Yakovlev, *applicant of the V.N. Karazin Kharkiv National University*

ABOUT THE LEGAL NATURE OF THE LEGAL ACTS FIXING TARIFFS ON HOUSING AND COMMUNAL SERVICES

In the scientific literature the legal act is generally understood as an official written document passed by the authorized body in the form defined by the law and according the set procedure, aimed at regulating social relations, it contains the rule of law and has non-personalized nature and is designed for repeated use. At the same time, based on the special features of the state regulation of the subjects of natural monopolies, acts fixing tariffs on their services have personalized nature since they are addressing the subjects of natural monopolies.

Concerning the repeated use it is obvious that the norm on fixing tariffs on housing and communal services is used whenever a manufacturer / supplier of utility services enters into a contract for the services provision with each individual consumer.

This situation takes place irrespective of the authorized subject whether it is National commission, or central body of the executive power, or the body of local self-government.

Thus we deal with the non-typical legal act which cannot be considered neither normative-legal act nor individual one.

In our opinion legal acts relating to the fixing prices/tariffs on housing and communal services should be referred to normative-legal acts. The argument in favor of this is the fact that the main feature of the normative-legal act is its normative character and repetitive use or application of the corresponding norms. It makes the legal act the normative one. Concerning the characteristics of the norms addresses this feature seems to be secondary or even odd one.

In practice there is a great quantity of acts containing the norms of law and intended for repetitive use, but even addressing individually specified subjects. It is necessary to ascertain the addressee of this or that norm of law. In our opinion the addressee of the norm of law is the subject who has certain subjective rights or legal obligations arising from the corresponding norm.

From our point of view it is correct to suggest the division of normative legal acts into personalized and non- personalized ones. Personalized normative legal acts are the acts, the content of which gives the opportunity to single out specific, individually determined subjects and the norms of this normative-legal act are addressing them. Non-personalized normative legal acts are the acts, the content of which doesn't give the opportunity to single out specific, individually determined subjects and the norms of this normative-legal act are addressing them.

UDC 347.921

Hikmet Javadov, *Candidate of Science (Law), research associate of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

SEPARATE ASPECTS OF IMPLEMENTATION OF THE CONCEPT "EFFICIENCY" IN THE CATEGORIAL DEVICE OF CIVIL PROCESS

Article is devoted to research of bases of use of the concept "efficiency" of the sphere of civil process. The author addresses to history of formation of the considered characteristic and its penetration into legal science. The separate attention is paid to those essential lines which make the content of concept of efficiency. The structure of research of civil legal proceedings in the plane of its efficiency is offered.

UDC 347.9

Myroslava Dyakovych, *Candidate of Science (Law), Associate Professor of the Ivan Franko National University of L'viv*

PROPOSALS FOR THE DEVELOPMENT OF MEDIATION IN NOTARY PRACTICE FN UKRAINE

The role and tasks of the mediation process in dispute resolution is analyzed. In particular the mediation procedure, the role of the notary as a mediator in peaceful conflict resolution and demands to it are considered. International practice of mediation by notaries is analysed, in particular the Law of Germany on Notariat, in which special powers of notaries as to the official procedure of extrajudicial disputes regulation is established.

Advantages of mediation in notarial procedure and peculiarities of its application by notaries is researched:

1) notary has no powers to influence on the parts of deed and to induce them to take decision;

2) notary has no powers to give preferences to any of parts and is obliged to support and guarantee the balance of interests, also the interests of third persons, whom the dispute may concern.

Legal positions are pointed out, in particular:

– confidentiality as principle of mediation is guaranteed by fundamental principle of notarial function – confidentiality of notarial deed (art.8 of Law of Ukraine "On Notariate");

– the procedure of mediation with the participation of notary is voluntary procedure.

It is asserted that notary essentially due to his professional responsibilities fixed in Law of Ukraine On notariat, normative acts of Ministry of justice of Ukraine and psychologic – moral characteristics which are distinctive of representatives of this profession, represents the functions of mediator while performing notarial function. In context of his functions as professional notary, notary

in the process of negotiations between the participants of notarial legal relations is to demonstrate skills to listen and persuade, high level of knowledge of law and information as to any changes in legislation, negotiate, control the discussion, to react operative to the mood and thought changes of parties, to be not only professional lawyer in the field of notariat, but also highly qualified not only by knowledge, but by life experience, to be psychologist.

Concrete changes in the aspect of mediation implementation in notarial process into the Law of Ukraine "On Notariate" are proposed.

UDC 347.643.1

Daria Marits, *Candidate of Science (Law), Associate professor of the Municipal Management Academy*

Inna Karpenko, *Student of the law faculty of Municipal Management Academy*

THE TREATY OF PATRONAGE

The article is devoted to the research of the contract on patronage.

Patronage is a form of education in which children without parental the care are transferred to grow up in a family of citizens under the contract, Zack leukaemia authorized state body and face (parenting essentials) who have expressed a desire to take the child. Foster caregiver is paid a fee, and he to undertake is to educate and to keep the child as a family member and recognized by the Trustee (Trustee) of his pupil.

The authors draw particular attention to the fact that the issues of legal regulation of contractual relations in the field of foster care remain poorly studied, the necessary aspects either superficially shown, or not fixed at the legislative level which results in the contradictions in practice, thus a number of urgent issues require immediate solutions on the legislative level.

The authors provided a comprehensive description of the contract: the object was defined; a comparison of patronage contract with civil – legal contract was carried out; the form of the contract is emphasized, and a number of other legal issues were analyzed.

Also the article pays attention to the fact that foster parent is assigned a number of duties that are not special, but are common and do not require from foster parent excessive efforts, because children are transferred to an ordinary family, where there may be a person without higher education because it is not essential, and most importantly in this case is to create the right conditions for living, learning and the full development of the child.

An important issue which is treated in the article is consideration of the size of payment and what budget will be used for payment of the foster tutor.

A distinction between the concepts of "patronage" and "adoption" is made. Patronage is simply a contractual form of family relationships, adoption does not provide such an opportunity because arises only as a result of a court decision.

In the article the authors also review other differences between patronage and adoption.

Also, the authors do not forget about the grounds for termination of patronage which is of importance, because if one of the parties expresses a wish to terminate the agreement, it is well possible, but simple desire will not suffice, there must be good reasons that are listed and analyzed in the article.

Having conducted research of the basic concepts used in the contractual relations in the field of foster education, the authors formulated the conclusions.

The authors defined the term "foster parents family" and suggested to fix this definition in the legislation; identified a mandatory form of contract; offered to fix the rights of the child and the requirements for foster parents, as well as to determine to what extent and from what budget will bepayment to foster parents provided.

UDC 347.168

Svitlana Nechyporuk, *Candidate of Science (Law), Associate Professor of the Kyiv University of Tourism, Economics and Law*

THE PROBLEM AND PERSPECTIVES OF DEVELOPMENT REGULATORY SUPPORT NOTARIAL ACTIVITIES IN UKRAINE

Relevance of the topic of Article confirms that Ukraine's intentions on becoming a developed European state cause of numerous legal reforms in various spheres of society. This also applies the sphere of notarial activity as an important legal mechanism for ensuring the rights and duties, of pretrial rights and interests of the person. Given this, is particularly important issues of proper legal support of notaries in our country.

In this context, the aim of the article is generalized study of the problems and prospects of regulatory support of notarial activity in Ukraine. To achieve it is necessary to address a number of challenges, namely: The main stages of legal reform in the notary; identify main problems and trends of legal regulation of notarial activity due to the adoption of appropriate regulations; get acquainted with current state of legal providing of notarial activity in Ukraine; formulate appropriate conclusions.

Because the task in the article the following results. In Ukraine legal reform in the notary is through the adoption of new legal acts aimed at regulating of notarial activity, changes and additions to existing as well as those that determine the direction of reform of the national notary in the state. Accordingly, the occurrence of a stage of legal reform in the article we connected with the adoption of the basic regulations that influenced the formation and development of legal providing of notarial activity. In view of this, the Article three main stages of legal reform and emphasize the present state regulation of notarial activity.

Stages of the legal reform are as follows: 1) the Law of Ukraine "On Notary" on September 2, 1993; 2) approval of the new Law of Ukraine "On Notary" by the Law of Ukraine "On Amendments to the Law of Ukraine On Notary" from October 1, 2008; 3) approval of the Concept of Reform of notaries in Ukraine by the Ministry of Justice of Ukraine on December 24, 2010 p. № 3290/5.

For each of these stages revealed the presence of unresolved legal problems and specific achievements in improving the regulatory support of notarial activity. The main problems and disadvantages in the legal regulation outlined the sphere of social relations as a consequence of the first stage of legal reforms include: outdated approach to regulating of notarial activity, restrictions on private notaries notarial acts, a significant increase in the number of private notaries, notary responsibility of regulating problems and others. According to the results of the second stage of legal reform identified the following major problems and disadvantages: the unresolved issue of payment exerted notarial acts, the unresolved issue of liability notaries unresolved issues of pension, social provision notaries, taxation regimes notaries and others. As the effects of the third stage of legal reform proposed to consider the current state of legal regulation of of notarial activity. In particular, among the main problems and disadvantages of the outlined the sphere identified are: the lack of a clearly formulated and fixed legal framework for regulation of the Institute of Notaries, increasing the number of legal acts, legislative gaps and inconsistencies between the provisions of legal acts.

An analysis of the above problems, the Article proposed solutions, in particular through the comprehensive systematization of legal provisions and the provisions of sub-legal acts. From this position supported the views of the authors who emphasized the need for systematic acts, namely the Law of Ukraine "On organization of notaries" (or "On organization of notarial activity in Ukraine") and Notarial procedure code The article found that such a move will allow to resolve the issue of notaries in Ukraine and separately regulate all procedural aspects of realization notarial activity and thus solve the problem of overlaps, gaps, conflicts of law and so on.

UDC 347.122

Natalia Kashkanova, *postgraduate student of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

ACTIVITY OF BIOETHICS COMMITTEES: ASPECTS OF INTEGRATION OF UKRAINE INTO EUROPEAN SCIENTIFIC SPACE

EU – Ukraine Association Agreement determine the necessity of unitization of subjects and results of scientific researches in the field of biology and medicine. The effectual including of Ukrainian science into European scientific space should take place headily and on principles of European scientific deontology.

The mechanisms of ethic control above biomedical researchers are improving in accordance with modern conception about admission and volumes of researches of human beings. The hard requirements to observe of ethic norms during the realization of biomedical researchers are absolutely obligatory regardless of degree of interference into human nature.

According to the international legislation the obligatory part of the system of realization of clinical researches of innovative methods of treatment and prophylaxis is realization of control after the observance of human, terms of safety, ethical and moral norms, confidentiality of research participants' rights. Absence of the proper ethic examination of any scientific research, the subject of which is human beings, human body or organized matter puts the results of such biomedical researches outside international scientific confession.

The modern world determined general principles of creation and functioning of ethic committees. Distinguish: national (central) ethic committees, that, as a rule, created at the ministries of health or other corresponding establishments, clinical researches of medicinal facilities, regional and local (local) committees, that is created at curative establishments or universities, where conduct clinical tests and directly provide the observance of ethical principles of testing, belong to the competence of that.

In accordance with the rules of the proper clinical practice (Good Clinical Practice – GCP) there are no researches could be provided without previous consideration and concordance of ethic commission will mark, position of GCP which are implemented to the national legislation.

For overcoming of subjectivism biotic committee's activity it should obtained uninfected legal mechanisms and criteria. Such legal instruments should be determined in Law of Ukraine "On biomedical researches involving human subjects". The aim of such Law is a protection of rights, health and life of participants of biomedical research, providing of safety and respect of dignity of research subjects during his realization. The Law should spread to all types of the researches sent to the receipt of information and spread of learning in the field of biomedicine in interests to protect the health of human population.

UDC 3.34.347

Natalia Oksanyuk, *applicant of the Khmelnitsky University of Management and Law*

CLASSIFICATION PRINCIPLES OF INHERITANCE

System property, in addition to the subject and method of legal regulation characteristic of such legal categories as principles of law that respect civil rights advocate systematizing featured at the industry as a whole and at the main institutions of the sector. Therefore, the principles of law that are part of the legal system themselves form a system.

Unfortunately, the question of a system of principles of inheritance have not received adequate attention in the legal doctrine. The main attention of scientists has focused on the study of inheritance law and in fact some of its principles, which, because of changing socio-economic structure dynamically changes its content, which greatly complicated the possibility of forming a system of principles. In addition, the issue of systemic principles could be resolved constructively, to not yet been formed system of principles of civil law, subject to regulation which includes inheritance relationship.

With regard to civil law principles, the fundamental problems of this until recently remained outside the legal community due care, most domestic scholars studied the principles of individual civil rights are not systematizing them, and the development of pre-revolutionary and Soviet period significantly lost its relevance because of changing socio-economic structure.

Thus, to some extent, for the inheritance law may be relevant such civil law principles as principles: free will and discretionary and related principle of freedom of contract; fairness, reasonableness and good faith; legal equality; inadmissibility deprivation of property rights; of civil rights under the moral foundations of society.

It is with these principles derived sub-sectoral and institutional principles of inheritance.

It is by the nature of inheritance law and the presence of its own specific principles, the composition of which is defined in the legal doctrine differently.

Without getting into a discussion about the fact that not all the proposed Soviet jurist position reasonably attributed them to the principles of inheritance, should be stated objective irrelevance of some of them, due to the changing socio-economic structure and the transition of Ukraine from command to market economy system.

But among modern jurist no unity in understanding issues of structure and content as general principles of succession and inheritance law principles in particular.

Of course, not all the principles of civil law can take place in the succession law. Thus, the principles of the inadmissibility of arbitrary interference in the sphere of private life; judicial protection of civil rights and interests; inadmissibility of unilateral waiver of liability; proper fulfillment of the obligation; actual performance of the obligation; cost performance commitments are only incidental importance for succession in terms of ensuring the protection of the estate, obligations of the parties by agreement or covenant inherited the condition, as well as the ability to protect their civil rights, including the courts. The principle of freedom of establishment that is not prohibited by law no inherent hereditary right, due to the fact that the fact of doing business does not affect the scope of rights and obligations of the decedent and heirs.

UDC 347.6

Natalia Starikova, *postgraduate of the National University of Internal Affairs of Kharkiv*

ASSISTED REPRODUCTIVE TECHNOLOGY: CIVIL-LAW CONTEXT

In the context of Ukrainian demographic situation, the article examines the state of legal regulation of new medical reproductive technologies. The problem of infertility in the whole world has not only medical but also socio-demographic coloring. One of the factors to improve the demographic situation in the country is to maintain both reproductive and general health of families, to raise the cultural level of reproductive behavior.

To overcome infertility became possible by the rapid development of biology, genetics and medicine, discoveries that have been made over the last hundred years, in the fields of embryology, cytology, and molecular biology. However, these achievements have other side, their use is forcing humanity to resolve a number of ethical issues that arise from the transformation of a society under the influence of scientific and technological progress. The birth of human being is the result of

combining the love of a man and a woman, aimed at the appearance of the child. By looking into the middle of the process, with the help of advances in technology, the scientists deprived the humanity the sense of wonder at the birth of the person. As a result, scientific and technological progress has become the impetus for the revision of the traditional values and that gave rise to an ideological crisis.

Consequently we see the appearance of issues requiring legislative regulation. And today, both domestic and global jurisprudence is in a state of theoretical and practical search.

The article shows the research status of the problem and the state of regulatory and legal framework. The most of legal issues have not found their solution in the current Ukrainian legislation. Existing rules of law are fragmentary, abstract and rather determine the presence of legal regulation subject, than the regulation itself. The present level of development in biomedical technologies and its impact on social relations does not allow to be satisfied with the existing regulatory framework, so the need for the development and legislative regulation of activities in the field of assisted reproductive technologies is extremely important.

UDC 340.1; 343.1

Tetiana Khorosha, *postgraduate student of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

IMPLEMENTATION COUNCIL OF EUROPE CONVENTIONSON SUCCESSION IN THE LEGAL SYSTEM OF UKRAINE

The article investigates the legal nature of the content and process of implementation of Council of Europe conventions in the field of inheritance in Ukraine. The paper examines the implementation of the legal framework of the Council of Europe conventions in the Ukrainian legislation and suggests ways of improvement to this process.

In turn, the article pointed out that the Council of Europe is quite an influential international organization comprising 47 European countries and operates under the Charter of 1949. It is worth noting that the legal value and effectiveness of Council of Europe standards provided for their implementation in national legislation.

However, implementation of the Standards of the Council of Europe has a number of problematic issues associated, first, with no fixed legal definition of the European standards; secondly, the presence of different perspectives on their concept and legal framework in the theory of international law; thirdly, with meaningful diversity the implementation mechanism of the Council of Europe.

As stated in an article exploring the Convention of the Council of Europe on succession should take into account the principle of priority of the EU law to the Council of Europe Convention. This creates legal certainty and clarity for states that are members of the Council of Europe and the EU, preventing the development of domestic law incompatible with EU law states as a result of the implementation of the Council of Europe conventions.

As a result, given that there is a need to bring domestic legislation of Ukraine in accordance with the Council of Europe Convention concerning the reform and adaptation of domestic legislation and its harmonization with the standards of Council of Europe conventions.

Specifically, it is proposed to make amendments regarding the form of the covenant, and add paragraph 5 of article 1247 of the Civil Code of Ukraine, the complement of Article 40 of the Law of Ukraine “On Notary” paragraph 7 and amend Article 1261 of the Civil Code of Ukraine, paragraph 2.

Accordingly, it will facilitate the implementation of the norms and standards of the Council of Europe in the field of children’s rights (including inheritance) and increase the positive image of our country in the international arena as a country that provides effective enforcement and implementation of children’s rights.

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*

THE WAYS OF MODERNIZATION AND OPTIMIZATION FOR INTELLECTUAL PROPERTY LEGAL REGULATION IN UKRAINE

The article presents the topic on modernization and optimization of intellectual property legal regulation in Ukraine in the modern stage of its development. The author considers the questions on organizing the efficient system of law enforcement in the course of creating and using intellectual property, on developing national scientific, technological and technical spheres of the state activity and improving their investment image, as well as suggests implementing the favorable investment climates and a wider using the positive foreign experience in the sphere of intellectual property modernization in science and economy.

UDC 347.77

Roman Shyshka, *Doctor of Science (Law), Professor of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

PLAGIARISM, ITS MANIFESTATIONS AND HAZARDS

The article deals with the problem of piracy and its displays in science and study. The author pays attention on the negative displays of piracy in general and concerning particular directions of creative work, especially in scientific activities he offers the decision of some controversial situations concerning their classification, also offers on improvements of current legislation' provisions.

Taking into consideration that piracy is an intended appropriation of authorship on another's scientific creation or work of art, the problem of acknowledgement of its qualifying feature – deliberation – appears.

It is offered to distinguish between some kinds of piracy (contractual, functional, educational, formal – combined of objects which are not protected by copyright, compiled, internet) that may be useful for modeling sanctions of their commitment.

Also the attention is paid on "scientific trash" – published works which have only formal features – publication or placement on data medium and electronic publications recently.

It is pointed out that the status of scientist has to be proved constantly: to work out new effective and successful works, train scientists, issue monographs where there are actual elements of novelty.

It is offered to shorten piracy to publication and another usage of work as one's own, in particular in qualifying scientific works.

The features of piracy are defined.

UDC 347.77

Gennadyi Androshchuk, *Candidate of Science (Economic), Associate Professor, Head of the laboratory of the Institute of intellectual property of the National Academy of Legal Sciences of Ukraine*

COPYRIGHT LAWS CANADA: MODERNIZATION AND ECONOMIC IMPACT

The author examines Canada's new Copyright Modernization Act and its effect on authors, performers, computer games developers, content providers and users. The novelties of the act include the expansion of limitations and exception from copyright, implementation of technical means of protection, introduction of liability for copyright infringement online, expansion of the bona fide use, hiking fines for illegal usage of copyrighted materials. He comes to the conclusion that the expansion of exemptions from copyright cut the profits of the nation's creative industry by more than EUR 20 mln.

UDC 347.7

Sergyi Mosov, *Doctor of Science, Professor, Deputy Director of the State Enterprise "Ukrainian Industrial Property Institute"*

THE ROLE OF UNIVERSITIES IN DEVELOPING THE NATIONAL STRATEGY ON INTELLECTUAL PROPERTY IN UKRAINE

This article conceptually investigates the role and determines the tasks of the universities in the formation of intellectual potential of our state with due regard to provisions of the National Strategy of Education Development in Ukraine for the period until 2021 and of the Law of Ukraine "On Higher Education" concerning modernization of the national education. The current situation of intellectual property in higher education establishments of Ukraine and, primarily, in universities is analyzed in this article. The tasks of universities in the development of the National Strategy on Intellectual Property in Ukraine are defined with regard to the experience of leading countries of the world.

UDC 347.77

Uliana Andrusiv, *Candidate of Science (Law), Associate Professor of the Lviv state University of internal affairs*

THE LEGAL STATUS OF BROADCASTING ORGANIZATIONS

In this paper the author subjected to theoretical analysis of the legal status of broadcasting organization as one of the related rights subjects. The particularized analysis of the main features that characterize the studied subject information activities has been conducted.

While developing (improving) conceptual and categorical apparatus in the protection of broadcasting organizations expediency the legislator applies the principle of technological neutrality. The essence of this principle is in ensurement that due to the rapid development of digital and

telecommunication technologies present and future cannot take into account all platforms and networks through which programs can be communicated to the public. As a result, legal protection should be provided regardless of whether the distribution of programs (broadcasts) can be referred to traditional broadcasting organizations or not.

On the basis of the current legislation it has been found that the legislator uses different terms: "TV and radio", "broadcasting organization" and "broadcaster", which are identical as proposed adjustments in art. 1 of the TV: 1) name the subject of information activity – broadcasting organization; 2) a new wording for a definition of "broadcasting organization"; 3) Replace the text of the terms "broadcaster", "TV and radio" to "broadcasting organization" and remove the appropriate definition to refer to the subject of the information, which has the exclusive rights to the program (broadcast).

It has been recommended to supplement the term "broadcasting organization" by organizations that broadcast on the Internet and other forms of telecommunication networks in case of distribution of their own information product.

According to the abovementioned the emphasis on the need of expand the range of persons who may be recognized as subjects of exclusive rights to the application (transfer) by individual entrepreneurs has been made.

Attention is paid to the inappropriate registration of broadcasting organizations as subjects of information activities.

The issue of creativity in the presence of these entities related rights has been highlighted. It has been found that the activity of broadcasting organizations should be regarded as creative or as being purely organizational and technical. Get creative nature can be traced in the creation of a broadcasting organization's own information product. In carrying out purely technical process – broadcast (relay) content as its own production and created other subjects of information refers only to the technical nature of the activity.

The author lists the specific scientific findings and proposals to fill existing legislative gaps in the field of legal study.

UDC 347.7

Ivan Vashchynets, *Candidate of Science (Law), Associate Professor of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

ON THE LEGAL QUALIFICATION OF PUTTING COPYRIGHTED WORKS ON THE INTERNET

The article is devoted to the legal qualification of putting copyrighted objects on the Internet. The author analyses the scope of the author's publication, distribution and communication right to the public, defines the correlation of these rights and distinguishes them. Using the Ukrainian and foreign experience and considering the existing court practice the author offers the ways enhance the Ukrainian law on the research problem.

UDC 347.77

Yakov Voronin, *Candidate of Science (Law), Associate Professor of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

THE ROLE OF PATENT TROLLS IN THE SYSTEM OF PATENT PROTECTION OF INDUSTRIAL PROPERTY LAW

Among the most important trends in the development of intellectual property rights can select the area of patent law, provides significant economic, philosophical, and legal impact on many areas of business and consumption. We are talking about the activities of patent trolls. Patent Troll (Patent Troll) is a company or an entrepreneur whose business consists solely in the payment of royalties for the use of its own patents. To date, there has been quite a discussion about this phenomenon. And all of them can be divided into those who see in it only the negative effects, and those that talk about the positives of this phenomenon along with the negative consequences. With regard to the first position, the main argument is the following: patent trolls are not only detrimental, but also undermine the basic principles underlying the patent law. Today the activity of such practitioners of organizations greatly increases the costs of business. For example, the company IPCom GmbH, famous patent Troll, has started a series of prosecutions against manufacturers of smartphones. The first victim of German company chose the most expensive brand in the world of Apple. The essence of the claims is the use of Apple in their mobile products IPCom technologies, which was acquired in the Robert Bosch GmbH in 2007. The amount of the patent claim is to 1.57 billion. As for other positions, we are talking about the activities of patent trolls from the point of view of protecting the interests of inventors beginners and domestic producers from large aggressive patenting of players in the market through control of imported products, higher prices for imported goods, etc. Ukraine in this issue is no exception. So in 2013 were granted patents on such industrial designs as a screw, package of superglue and tablet computers. Issued patents for stoppers for bottles, a toothpick and fuel briquettes. Unfortunately, in Ukraine patent trolling may become a new genre of "banal extortion. It is possible that the emergence of such trends is only a matter of time.

And as a result of this article we made a conclusion, patent trolling is a negative phenomen, because the main purpose of such activity is the receipt of income as a result satisfied the claim by the court at the expense of true innovators. Probably the best way to prevent the abuse of trolls their rights is a quick review of such claims by the courts. As a consequence, only the speed of the judgment is negative for patent trolls decision depends on the development of performance integrity and true innovators.

UDC 347.77

Oksana Kashyntseva, *Candidate of Science (Law), Associate Professor of the Kyiv University of Law of the National Academy of Sciences of Ukraine, Head of the department of the Institute of intellectual property of the National Academy of Legal Sciences of Ukraine*

FEATURES OF SUBJECT OF AGREEMENT ON CREATION OF OBJECTS OF PATENTING IN THE FIELD OF MEDICINE

According to the official statistics of State Service of Intellectual Property of Ukraine the percent of applications on grating the patent on an invention in the sphere of medicine in correlation to the general amount of requests hesitates approximately within the limits of 10–12 % from the general amount of applications submitted to the office. This is a marker that shows the monopolization of knowledge in the sphere of medicine in Ukraine, and consequently possibility to dictate the prices at the market of medical services.

The Ukrainian legislation in the field of intellectual property allows to patent methods of treatment which contradicts the European doctrine of Intellectual Property and Human Rights in this part. However absence of methods of treatment among patentable objects in the European legislation does not put a medical worker in uncompetitive position. There are other legal mechanisms of receipt of compensation (remuneration) from application of the intellectual product at the market of medical services. Signing of EU – Ukraine Agreement on Association puts new challenges before the home market of medical services.

The subject of contract on creation and use of objects of patenting in the sphere of medicine are the following: i) inventions and utility models protected by the Law of Ukraine "On Protection of Rights on Inventions and Utility Models"; ii) industrial designs protected by the Law of Ukraine "On Protection of Rights on Industrial Designs".

However, it is necessary to stress that currently there is the process of rethinking of priorities of Human Rights in the sphere of Intellectual Property in medicine. Reformation of sphere of Health Care predetermines also the necessity of reformation of right of intellectual ownership by strengthening of requirements to the patentability of methods of treatment.

UDC 347.77

MariaYashurova, *Candidate of Science (Law), Associate Professor of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

PLACE OF INDUSTRIAL PROPERTY LAW IN THE LEGAL SYSTEM AND THE IMPACT OF LEGAL SYSTEMS OF THE WORLD ON ITS DEVELOPMENT

In article identifies the characteristic features of industrial property rights in the legal system of Ukraine and the impact of legal systems of the world in its development under the influence of these global processes.

UDC 347.77

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

THE VALUE OF ESSENTIAL FEATURES WHEN ESTABLISHING THE SCOPE OF LEGAL PROTECTION OF INDUSTRIAL DESIGN

In connection with the formation of a common economic space between Ukraine and the European Union, it is necessary to improve the legal protection and enforcement of intellectual property rights in order to ensure an adequate level of performance. Ukraine should improve mechanisms for protection of industrial designs in order to ensure the same level of protection as in the EU legislation.

This article discusses the issue of obtaining civil protection of industrial designs in Ukraine, analyzes the important features that affect the scope of protection.

So, before applying for a patent, you need to determine which features are essential and which are not, and decide which images to submit your application.

By the essential features of the industrial design include the following features that define the aesthetic and ergonomic features of appearance of a product, are the properties of verbal identification products, including such features may be: shape, configuration, combination of colors. In other words, what are the essential features are features that form the appearance of the object and make it possible to adequately explain that the aesthetic value of the product for which it is registered and industrial design.

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.

The research question was found that there are gaps in the legislation to be filled for better mechanism for the legal protection of industrial designs in Ukraine. To do this, the author proposes to amend the Law of Ukraine "On the Protection of Industrial Designs."

UDC 347.77

Alina Luzan, *Applicant of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

RESEARCH METHODOLOGY BY THE COMPLEX SYSTEM OF CIVIL LAW PROTECTION OF INVENTIONS

This article discusses the current problems that accompany junior researchers in the study of a specific topic.

Owing to the nature of such concepts as "science", "method", "methodology" the author suggests paying attention to the different approaches to the development of those selected for dissertation research.

Based on the opinion of the great minds of our time, the author defines the basic problems of scientific knowledge.

According to him, they are in a number of things that are both subjective and objective. Based on the integration of data from different fields of science, the hypothesis, according to which any structure research a specific topic has its own structure and framework.

Thus, the purpose of the article is to offer interaction techniques and methods that together allow methodological approach to the study of the topic "civil-legal protection of inventions in Ukraine and the European Union".

Based on the hierarchy of needs, and further developing the idea in the historical and geographical aspects, the author comes to the conclusion that the original inventions comparable to modern international classification of patents for inventions. In turn, the entire global patent system is understood as a complex mechanism that includes a number of subsystems.

Gradual transition to a complex system of civil protection of inventions, defining its essence and content, the author seeks to identify the main problems and possible solutions.

In addition, using the methods of analogies and comparisons, as well as from the experience of various countries in the world is given the opportunity to predict the anticipated economic results.

In addition, the feature article is a schematic display of the research methodology chosen theme, as well as a detailed description of the scheme using the terminology of geometry.

UDC 347.773.2

Taras Romaniuk, *Applicant of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

UTILITY MODELS LEGAL PROTECTION IN SOME EUROPEAN COUNTRIES: EXPERIENCE FOR UKRAINE

In the article the legislation of the European developed countries in the field of utility models protection is researched. The author gives the accent to the determined features of the respective national legal systems in this area that contribute to adequate protection of the rights of utility models patentees. On this basis the author proposes ways of improvement of the utility models protection system in Ukraine.

UDC 349.41

Bogdan Danylenko, *Candidate of Science (Law), chief specialist of Law department of State agency of land resources of Ukraine, secretary of Scientific Council of State agency of land resources of Ukraine*

SUSTAINABLE USE OF NON AGRICULTURAL TERRITORIES OF AGRICULTURAL LANDS IN UKRAINE: CURRENT PROBLEMS AND WAYS OF THEIR DECISION

From 1990 till present in Ukraine the land reform is held.

At first the main idea of the reform was to change the owner of lands. At the times of Soviet Union all lands belonged to the state. Now we have three types of property on lands: state, local self government and private.

Before 1990 the agricultural lands belonged to the state and were used by soviet collective farms. The residents of the villages worked in these farms and were the members of these farms.

During 1990-s soviet collective farms were transformed into so-called collective agricultural enterprise. These enterprises became owners of the lands that previously were used by soviet collective farms. This was the collective property. The Constitution of Ukraine does not recognize such type of property. But it still exists.

After 1999 the most of the collective agricultural enterprises were liquidated. The lands were distributed between the members of enterprises.

At that time the main attention was paid to the property issues. The government have not paid due attention to other issues of land policy. As the result many problems appeared. One of them is the problem of using of non agricultural territories of agricultural lands.

In Ukraine agricultural lands are divided into several types. The main division is the division into agricultural lands and non agricultural territories of agricultural lands. Non agricultural territories of agricultural lands in this case mean lands that in fact are agricultural but are used not for growing crops. Instead of this they are used to make buffer strips, different buildings, etc. In fact these lands are the infrastructure of other agricultural lands.

During the land reform in Ukraine the government agricultural lands become lands of so-called collective agricultural enterprise. Then these lands were divided between members of these enterprises. But non agricultural territories of agricultural lands were not divided between members of enterprises. As the result of land reform in Ukraine the majority of these lands today belong to nobody. They are not used properly.

In this article the author considers different situations about these lands and offers the solution of the problem.

These situations are: 1) The enterprise still exists; 2) The enterprise is reorganized; 3) The enterprise is liquidated

In the first case the author agrees with that that the enterprise is the owner of the land. And despite the fact that Ukrainian Constitution does not recognize collective type of property the right of ownership of enterprise is still protected buy the law.

The most complicated situation is when the enterprise is reorganized and the assignee haven't received the property on the land. In this case the land does not become the government land as somebody thinks. The land belongs to nobody.

The author offers to solve this problem with the help of the concept of the ownerless immovable property. In Ukrainian law the concept of ownerless immovable property means the immovable property that belongs to nobody. According to the Civil Code of Ukraine the body of local self government has the right to acquire this property on the basis of judicial decision. The author also offers to give the pre-emptive right to rent this land to the person that is using the rest of the lands of the enterprise that was reorganized.

The last situation is when the enterprise is liquidated.

If the liquidation occurred after the first of January of 2002 the distribution of the land is regulated by the article 30 of Land Code of Ukraine.

If the liquidation occurred before the first of January of 2002 according to article 5 of Land Code of Ukraine of 1970 the land becomes the government land.

In the last situation the author offers to give the pre-emptive right to rent this land to the person that is using the rest of the lands of the enterprise that was reorganized.

The author disagrees with that scientists that offer to recognize the property on these lands of former members of enterprises. According to the Ukrainian law to obtain the right on the land the person should pass the complicated procedure. So it is impossible to simply reorganize somebody's right on the land.

He also disagrees with the idea to give the land to former members of enterprise. The state and the society are interested in giving the right to use the land to the person that is able to use it effectively. So it would be better to give the pre-emptive right to rent the non agricultural territories to the person who already has a viable farm on the basis of agricultural lands.

That is the way the author offers to solve the problem of using of non agricultural territories of agricultural lands in Ukraine.

UDC 349.42; 728.12

Viktoria Latysheva, *Candidate of Science (Law), professor of the Kremenchuk Mykhailo Ostrohradskyi National University, researcher of the Koretsky Institute of State and Lawof the National Academy of Sciences of Ukraine*

LEGAL ASPECTS OF HOUSING CONSTRUCTION IN RURAL AREAS

The article deals with the study of legal regulation of housing construction in rural areas. It has been established that the regulations in that are largely in effective because there is no systematic approach concerning improvement of rural areas. In addition, there is partial funding of government programs. It is proved that a systematic approach to housing development in the country sides houldaim to build a model that would take into account living conditions of people engaged in agriculture, processing and service sectors of agriculture and rural social area.

It has been conducted the research of residential houses of flat and house holding types. It has been proposed that individual residential building is a priority accommodation for people employed in agriculture including farming and individual house holding agriculture as the last living conditions closely related to the implementation of agricultural activities. Flat houses in rural are as usually have to meet requirements of people engaged in the processing and service sectors of agricultural complex of Ukraine and social life.

It has been stated that at the current stage of agricultural reformation the support program recovery for individual housing construction in rural areas "Vlasnyi Dim" is provided Accordingly, it is proposed to amend the legislation concerning support of housing construction in Ukraine in order to provide financial assistance for the building go energy-efficient house sorcon version of existing heating systems in the accommodation to energy-efficient systems. Thus, the specified legal act will not only support housing development in rural areas but it also should implement the requirements of

EU Directives as to energy characteristics of buildings including the establishment of minimum requirements for energy efficiency in buildings, construction of buildings with almost zero energy consumption and so on. In addition, it has been proposed to remove from legislation the term "individual constructor" as it restricts the right toprovide appropriate living conditions, because in addition to individual housing the housing construction is provided in legislation. Some changes should be made to determine the amount of credit to be formed according to living standard.

UDC 349.4 (477)

Tetiana Churilova, *Candidate of Science (Law), Associate Professor of the Sumy State University*

LEGAL PROVIDING PROPER MANAGEMENT OF PUBLIC LANDS UNDER ADMINISTRATIVE REFORM

One of the essential problems of Economics reforms in Ukraine is invariability of forms and methods of state administration while the social relations are transformed.

Today the majority of developed nation, where the transformation of state administration has been proceeded, move to up-to-date public management model, which is generally defined as New Public Management by World Bank.

Economically the land functions as production goods and spacial operational basis. Land is an asset which brings a steady income, so the land has to be concerned as a capital. So the management of this resource should be based on economic efficiency and stick to ecologic interests of the society.

Functions and rights of authorities, who are in change of state lands, are set in special laws and regulations, which are not mutually agreed or are repeated. The powers division system is absent and it leads to duplication of functions. The power borders of local government authorities and district state administration are not clear. Moreover, the legality of decisions regarding ownership or usage of land lots make a big problem, because of the absence of set locality borders. Under such juristic conditions, the management of state lands, including agricultural can not be effective.

Qualitative changes in state lands management is a complex problem. This problem can be removed by the reform of executive government and government service at all – by administrative reform.

One of the possible ways to create an effective model of state lands management can be the transfer of the ownership of the lands, which are located outside the locality borders and are state lands, to community property. But that can be done only after implementing of the administrative-territorial reforms.

The experience of foreign countries regarding the increasing of state management of agricultural lands efficiency is interesting and useful. Taking into account the experience of the EU countries Ukraine has to learn the advanced world experience. Moreover, Ukraine has formal commitments of the harmonization of its laws and regulations with EU laws.

Ukraine has a high-capacity land potential, but keep in mind that it belongs not only to us, but also to future generations. Main aims for the one who owns state land property are receiving of profit and environmental care.

UDC 343.9.018+314.8.061

Pavlo Serdiuk, *Doctor of Sciences (Law), Associate Professor, Professor of the National Prosecution Academy of Ukraine*

URBANIZATION AS A CORRELATE OF CRIME

In the article is note that most theories of urbanization as a correlate of crime, while speculative, is a rather faded theory, which cannot be re-check by observations, for the estimated "urban lifestyle" can be stretched "everyone with their own yardstick". On the contrary, a good theory can be verified through observation. In this role can claim and the theory of urbanization, as the concentration of a large number of the population in a populated area, and even the theory of population density, which can also be verified. In the article says that emphasize the role of urbanization on the macro level is unreliable. It should be borne in mind that the expansion of cities, of course, leads to an increase in population in the region, cities, and if so, on this issue has the advantage of problem number and density of population.

Therefore, a different view on this issue will provide an opportunity for verification of established views. It is so, that change of emphasis on this issue will look at it with greater precision, as urbanization and population density alone, without taking into account the number of people, are do not give sufficient grounds to assert the role of self-correlation of urbanization and increasing population density for quantitative indicators of crime. Actually, the verification of this issue is the purpose of the present study.

Not any advantage in population density can have a significant impact on socially significant figures. In addition, it is obvious that crime, and therefore its registration to significant fluctuations depending on many factors, but still remains within the mathematically expected number, and subordinate disperse influence. Thus, cannot be considered conclusive arguments of those researchers who argue that population density have the opposite effect on the growth of registered crimes.

The researchers to draw conclusions about urbanization as an independent factor influencing the number of crimes committed, often mistaken to use in own calculations unit per 100 000 population. However, they ignore the leading role is the number of urban dwellers, but exaggerated "urban living standards". It is understood that in the villages of the population will be less than in urban areas, but urbanization itself affects the amount of crime, and the increasing number of residents in the city. Leading with the calculation based on the analytical unit of 100 000, they lose contact with the painting influence of the number of population on crime.

It is noted that the speculative theory of urban lifestyles as a condition of crime has not been empirically confirmed. On the contrary, it should be noted that the conclusions were based on questionable methods of calculation using analytical units that do not take into account the role of the number of population. In the article emphasizes that we get a mathematical proof that urbanization is not, as such, and do not play the role of population density correlate of crime, but the number of population a correlate of crime. The Indicators of increasing number of reported crimes in cities with a high degree of urbanization are not associated with it, but with a large of number population.

UDC 343.213.5

Rasim Babanly, *Candidate of sciences (Law), Head of Scientific-expert Department of High Specialized Court of Ukraine for Civil and Criminal Cases*

DEVELOPMENT OF RETROACTIVE CRIMINAL LAW PROHIBITION

Questions of temporal validity of legal acts are particularly relevant in the current period tangible changes in legislation, new approaches to lawmaking and enforcement of transformation processes in the society and the state. Under these conditions, the rules of the law at the time has to be unshakable foundation that ensures respect for fundamental human rights and makes it impossible to neglect such rights.

Traditionally, the search for historical evidence of the development of legal categories, especially those that are of fundamental importance for the relevant area of law should start with monuments of Roman law. After all, they fixed the origins application of an action criminal law at the time, as a legal phenomenon.

Gradually apply the principle of "nullum crimen, nulla poena sine lege" in legal practice of the Roman Empire was reduced to its component "nullum crimen, nulla poena sine lege praevia" – ban retroactivity of criminal laws.

Thus, the period of Rome should be considered in the initial genesis of temporal validity of legal acts. This is the period of a new legal category of algorithms and their application in practice and forming ideas about them, their concept in Roman law and legislation. At this stage appeared the first legislative consolidation provisions that the law operates in future time. However, systematic and sophisticated provision prohibiting retroactive criminal law at the time and performance features over time laws that define criminal acts appeared later, with the development and practice of the Roman jurists formation on the basis of relevant scientific views.

The article concludes that the statutory principles of law, without which it is impossible to establish the existence of temporal rules of criminal law at the time held under criminal law doctrine, which in turn formed in the development of the theory of separation of powers. It is theoretical rather than casual reasons analyzed regulatory consolidation principles of legality is characteristic for its development in the Russian Empire, including the territory of Dnieper Ukraine. However, the article is an analysis of legal acts, which operated in the Dnieper and Western Ukraine, which were under the influence of the Russian Empire and Austria-Hungary, respectively. In particular, it was found that the provisions of nullum crimen sine lege and nullum poena sine lege reflected in the Order of Catherine the Commission on the drafting of a new Code 1767. Catherine II as the main creator in order seeing this principle, in particular, preventive function of criminal law.

In his turn, among acts that were in what is now western Ukraine, namely codes Tereziana, Carolina and Yosefina, only the last of these contain provisions prohibiting brought to justice for acts that are not provided in the criminal law. Significant attention is paid to scientific articles discussion on the provision prohibiting retroactive criminal law in the late XIX – early XX century. Results existence of such a debate can be seen in the Criminal Law of 1903, which was fixed rather original approach to determine aspects of retroactive criminal law in time. According to Art. 14 of the Code is "re-issued criminal law applicable to the court that decides the verdict and those committed to the enactment of this law force acts which were prohibited under penalty of them, when they occurred". Thus, in this legal act effectively legalized retroactive criminal laws not only mitigate, but also increased the responsibility.

Also analyzed the Soviet period, during which analyzed ban has long been enshrined in procedural, not substantive law. In turn, the final manifestation to date of the provisions of the rules retroactive law in time was the adoption of the Criminal Code of Ukraine, 2001, which affirmed in Article 5 of retroactive provisions of the law on criminal liability have been additions and upgrades Law of Ukraine "On Amendments to the Criminal and the Criminal Procedure Code of Ukraine on the humanization of criminal responsibility" on 15 April 2008. The current wording of Article 5, along

with fixing the rules on retroactive law that mitigates criminal responsibility and otherwise improve the status of the individual, contains provisions on the law on criminal responsibility, which is partially softens and strengthens partly responsible, as well as the effect this law subject to repeated changes. The results of the study it can be concluded that the prohibition of retroactive criminal responsibility by developing evolutionary along with the development of principles of law in the practice of law and criminal law, a precondition for securing the relevant principles are doctrinal position.

UDC 343.121.4 (447)

Bohdanna Vashchuk, *Candidate of sciences (Law), Associate Professor of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

MANDATORY DEFENSE COUNSEL IN CRIMINAL PROCEEDINGS

The new Criminal Procedure Code of Ukraine significantly reformed criminal justice system. Some of the changes introduced, in practice, proved to be effective and is already contributing to the effective protection of individual rights in criminal proceedings. Others – still need improvement and harmonization with the needs of today.

One of the positives of the new Code of Ukraine, and made him further changes, extending the range of cases in which defense counsel in criminal proceedings is mandatory. This position legislator is justified, consistent of the other rules and principles of criminal procedure is intended to facilitate the effective exercise of the right to defense, the right of access to justice, strengthens the competitiveness of the Criminal Procedure Act. However, changes made to the Code of Ukraine does not always have a systemic nature, and because some of its articles should be improved.

Norm Code of Ukraine (art. 52), which lists the cases mandatory participation of defense counsel in criminal proceedings is customary. Therefore, according to the technique of construction law, it must be provided for all, without exception, the situations in which defense counsel in criminal proceedings is mandatory, not just some of.

However, it should be stated that art. 52 Code of Ukraine is not listed all cases mandatory participation of defense counsel in criminal proceedings. On the basis of the content of the Criminal Procedure Law of Ukraine can be concluded that the criminal process takes place for at least a few situations in which defense counsel is mandatory, but the legislator arbitrarily they are not mentioned in art. 52 Code of Ukraine.

Therefore it proposes to supplement ch. 2, art. 52 Code of Ukraine the following provisions: “9) on the defendant for violation of court hearing by a court decree removed from the courtroom temporarily or for the duration of the trial, if the accused is not represented by counsel, – from the moment the decision on removal of the accused courtroom; 10) for a suspect in respect of whom the application for a special implementation of pre, – upon a motion for the implementation of the special pre-trial investigation; 11) against the accused in respect of which deals with the implementation of special proceedings, – upon a motion for the implementation of special proceedings”.

UDC 343.827

Natalia Kolomiec, *Candidate of sciences (Law), Associate Professor of the Educational and Research Institute of Law and Social Technologies of the Chernihiv National University of technology*

IMPROVEMENT OF LEGISLATION TO REPLACE THE UNSERVED PART OF THE PUNISHMENT MILDER AND PRACTICES (PART 1)

The article is a continuation of the series of publications devoted to the study of problems of application replacing the unserved part of a more lenient punishment. This paper examines a number of legislative gaps the Institute replacing the unserved part of the punishment by milder practices. One of the the objectives is to improve the replacement legislation to replace the unserved part of a more lenient punishment. Analysis of court decisions indicates a imperfection and the presence of normative regulation and practice of prisoners to the norms prescribed by law encouraging frequent gaps and lack of uniformity in addressing these issues.

Proposals submitted to the Criminal Code of Ukraine (article. 82), the introduction of which will avoid legal conflicts when using replace the unserved part of a more lenient punishment. Substantiated proposal is more efficient option to improve laws, by making claims to the CC of Ukraine, according to which the court would consider replacing … gradually, in steps.

The study elucidated the idea practitioners as to what punishment should be applied in order replacement. As a result, the questionnaire yielded the following results: 82 (40.6 %) of people believe that imprisonment can replace imprisonment, 44 (21.9 %) – arrest; 36 (17.8 %) – corrective labor; 40 (19.8 %) – the public. So the idea practitioners divided, although there is an advantage offered by the author of the proposal. According to what punishment should be replaced in steps that gradually.

In this regard, in order to unify law enforcement, prevention of appointment unreasonably lenient sentence in the application of Art. 82 Criminal Code of Ukraine, it would be appropriate to limit the legislative judicial discretion in the selection of another, milder primary punishment.

An Art. 82 Criminal Code of Ukraine amended by amending Article 5 part as follows: “A more lenient sentence is considered punishment that near the degree of severity of the designated primary punishment. In the case of a direct ban on his appointment as the court moves to the next sentence in the above article. 51 of the Code”.

Parts 5 and 6 of Art. 82 Criminal Code of Ukraine due to changes recognize parts 6 and 7, respectively.

UDC 340.63

Valerii Tsymbaliuk, *Candidate of sciences (Law), Head of Department of the National University of Water Management and Nature Resources Use*

ROLE OF FORENSIC PSYCHIATRIC EXPERT EXAMINATION IN PERSON’S MENTAL STATUS ASSESSMENT

The article deals with forensic psychiatry as the only possible tool to find out about mental status of a person. It is revealed that along with its specific tasks modern practice of law also requires unbiased and accurate assessment of mental status of some persons (injured, suspects, investigators, civil claimants) etc. Analyzing aforementioned reasons the following conclusion may be stated:

jurisprudence cannot perform tasks related to the person's mental status examination itself. Such tasks can be done only with participation of persons having specific knowledge of psychiatry. The issue of involving experts capable of such knowledge while applying exclusion or reduction of legal liability is particularly urgent.

The opinion was reasoned concerning the fact that the judge, public prosecutor, advocate or investigator during investigation of the case circumstances participants of which have some mental peculiarities should efficiently use specific knowledge of forensic psychiatrists. In their turn while conducting psychic or psychiatric examination, forensic experts should understand all the importance of imposed responsibility upon them. Thus they have to be accurate while making diagnosis since their classification of a certain mental status of a person in an expert report can be fateful for the participants of proceedings. That is why, expert opinion must be accurate, well-grounded, unbiased, and extensive. It is defined that correct combination of legal knowledge and knowledge of psychiatry is a necessary tool to investigate cases which include the elements of mental disability, exceptional and exclusive statuses of their participants.

The issue of social preventive measures for mentally disabled people is defined to be still urgent. As a matter of fact, after the course of compulsory treatment the latter ones are left without proper care and attention and repeatedly commit crimes thus posing a risk to the public.

The article is also concerned with the issue of separating a special branch of penitentiary psychiatry from forensic psychiatry. The key tasks of this field are as follows: providing imprisoned with good psychiatric assistance; revealing persons with mental disorders out of convicts and proving them with qualitative psychiatric, psychological assistance and drug dependency treatment, and if required compulsory treatment of alcohol or drug abuse.

According to the article the development level of society, general and legal culture can be characterized by the people's attitude towards mentally disabled. Namely due to this, the rights and levers of protection of mentally disabled which are under psychiatric (particularly, forensic psychiatric) expert examination shall be grounded on the Constitution and be legally regulated in details.

To sum up, the conducted analysis of the scientific literature proves forensic psychiatry to be fragmentary and non-systematic in questions of person's mental status. That is why scientific research of forensic psychiatry and its separate branches is considered to be an urgent scientific search.

UDC 347.991+347.964

Vita Voloshina, *Leading specialist of the office of management ensure that the activities of the Judicial chamber on civil cases of the Supreme Court of Ukraine*

SELECTED ISSUES OF THE SCIENTIFIC ADVISORY OF ENSURING OF THE IMPLEMENTATION OF THE AUTHORITY OF THE SUPREME COURT OF UKRAINE

The article examines the state of scientific value and elaborated scientific advisory ensure the implementation of the Supreme Court of Ukraine. The formation of Ukraine as a sovereign, democratic and legal state is closely linked to the long and controversial process of formation of the judiciary. Maintenance of law and order, protection of the rights and freedoms of man and citizen, protection of the legitimate rights and interests of the state and society – function adequately inherent legal democratic state and make goals and daily activities of public authorities, including the powers of the judiciary, which acts as an independent and independent branch of the government.

It was found that the analysis of the history of the formation of the Supreme Court of Ukraine, changing its role, function and competence in different periods of national history is one of the urgent tasks of legal science. It's proved the necessity of the study of mentioned scientific advisory of the effective functioning of the Supreme Court of Ukraine, due to the fragmented and episodic existing

work on the formation of the Supreme Court of Ukraine and a complete lack of scientific research of the pressing problems of scientific support of the judiciary.

Justice system in any country is always the object of steadfast attention. No less attention is paid to the highest judicial body, which depends on the judicial system as a whole. The policy of any state aimed at establishing a balance of interests between the individual and society; judicial policy aims to ensure this balance depends, largely, on whose interests and how to be protected. That is why the organization of the judicial system has always attached one of paramount importance. The correct and proper functioning of justice is more dependent on the organization and the Supreme Court.

We believe that the content of this Supreme Court of Ukraine, as the highest judicial body of general jurisdiction, constitutional function justice (justice) should be on the review of judgments of courts of the same subject all links and instances both of substantive and procedural law, in particular, the subject verification in addition to existing grounds include a violation of the court of cassation with procedural law and verify the legitimacy of judicial decisions in the statement of appeal judge dissenting opinion.

The process of making such decisions by the Supreme Court of Ukraine, and the consequences of their decision requiring the provision of the Supreme Court of Ukraine wide range of powers to ensure the highest court of a substantial analytical support to provide just that tribunal consultative assistance to lower courts.

Background of this article can hardly be denied, because, in our opinion, based on scientific system to ensure the effective functioning of the Supreme Court of Ukraine should be put current fundamental scientific knowledge that would enable a paradigm change jurisdiction of the highest judicial body of traditional models of innovation. Thus, problems of scientific support operation of the Supreme Court of Ukraine can be defined as a key to the overall system ensure effective operation of the judiciary. It is concluded that the ultimate goal of scientific support jurisdiction of the Supreme Court of Ukraine at the present stage is actually the creation of a stable and efficient system of software that will help transform it to a court for a formal right to a court of real law.

UDC 343.222

Tetiana Domanova, *Applicant of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

APPROACHES TO THE REGULATION OF COMPLEX GUILT (MENS REA) IN THE LAW OF FOREIGN COUNTRIES

The article examines the criminal law of foreign countries in terms of regulation when intent and negligence combined in the commission of a criminal act. The study revealed the existence of issues that are associated with the legislative regulation of complex guilt. Thus, the legal significance of complex guilt can take on two occasions, intent on actions and negligence of the consequences; intent on action and effects by careless attitude to consequences occurrence which causes a higher level of responsibility.

On the basis of analysis of legal acts can be stated that an approach that involves consolidation rules governing cases a combination of the two forms of guilt are common enough in foreign countries. However, basically corresponding provision regulates case involving intent on all the main features of the offense and negligence on the consequences of his aggravating circumstances. Also characteristic feature of legal regulation of the analyzed issue is the consolidation rules that the offense considered intentional. In turn, some combination of the Criminal Code provides two forms of guilt and if there is intent on action by careless attitude to consequences that are mandatory feature of the offenses. Established different approaches to using the term used to refer cases a combination of different forms of guilt, because, in particular, the lack of a common position on these issues in the science of criminal law. It can be highlighted the following options denomination cases a combination of different forms of guilt “mixed form of guilt”, “double fault”, “complex form of guilt”, “complex

guilt". Thus, the science of criminal law their position to assess these terms as identical in content and filling them with different content.

In the context of the raised question proved that the existence of different approaches both in law and in the science of criminal law indicates that the use of a term to refer cases a combination of different forms of guilt requires a detailed analysis. At the same time, the article argues that the creation of artificial differences between identical in its legal nature of the legal concepts and transfer these differences in the law on criminal law not contribute to the improvement of law enforcement, but rather the contrary, complicate it.

The main, in our opinion, is a factor is the existence of appropriate norms of the Criminal Law, which can be achieved without fixing its name. Thus, analysis of the criminal law of foreign countries distinguish four possible approaches to the regulation of cases a combination of different forms of guilt in the crime: 1) lack of rules that would govern such cases; 2) the rules regulating cases a combination of the two forms of guilt when intent on action and on the consequences of negligence as mandatory elements of a crime; 3) if rules governing cases a combination of the two forms of guilt when intent on action and on the consequences of negligence as mandatory elements of a crime and the case in which there is a careless attitude to the consequences as aggravating circumstances of the crime; 4) the existence of rules that governs that careless attitude to the consequences as aggravating circumstances of the crime with intent concerning action can not be assessed at a rate which imposes liability for such qualified staff, and therefore excludes criminal liability for such norm.

Along with the analysis of domestic law jurisprudence analyzed to address the question of the actual combination of different forms of guilt and found that despite the fact that the law on criminal liability does not include cases in which the subjective aspect of certain acts characterized by intentional form of guilt in relation to negligence actions and the consequences, the official say a combination of relevant decisions. Thus, the results of the study revealed two arguments speak in favor of expediency consolidation in the Criminal Code provisions on Ukraine cases a combination of the two forms of guilt in committing other acts: first, the prevalence approach to securing appropriate standards in criminal law and in foreign countries, secondly, the prevalence of the use of the approach in practice, despite the lack of appropriate legal preconditions in the criminal law.

UDC 343.8

Oleksandr Ivakhnenko, *postgraduate student of the Dnipropetrovsk State University of Internal Affairs*

FOREIGN EXPERIENCE OF HOOLIGAN ACTS CRIMINALIZATION

The article contains a comparative analysis of ascertainment of responsibility for hooligan acts in criminal codes of states established in post-Soviet area. Our research showed that the approach of national legislators was different to both determination of the circle of hooligan acts and to determination of constituent elements of offense named as Hooliganism and other *corpora delicti* which contain elements of acts committed of hooligan indictment or committed of other motives, but with gross violation of public order. At the same time the prevailing trend is that in most codes hooligan acts are treated as both act and motive, whereas articles of law providing responsibility for such deeds constitute actually a formed criminal legal institute. This institute consists of three types of norms (articles): 1) norms establishing responsibility for hooliganism as such in article named Hooliganism; 2) norms containing constituent elements of offenses which are hooliganism in essence, but are qualified by other special articles of criminal law; 3) norms containing constituent elements of various offenses committed of committed of hooligan indictment.

We showed that containing constituent elements of hooligan offenses as such in different criminal codes were not identical by their content, therefore, depending of construction peculiarities of this kind of offense we marked out six types of dispositions: 1) containing constituent elements of

so called ordinary hooliganism, not showing any signs of impertinence nor cynicism; 2) containing constituent elements of ordinary hooliganism, as well as signs of cynicism; 3) containing constituent elements of hooliganism, aggravated with violence, destruction or damage of property, not containing signs of cynicism; 4) containing constituent elements of hooliganism, aggravated with special impertinence or exclusive cynicism; 5) containing constituent elements of hooliganism, aggravated with special impertinence or exclusive cynicism, or accompanied by resistance to public agent or other person barring hooligan acts; 6) containing constituent elements of hooliganism, committed with application of weapons or other similar tools or by extremist indictment. The second group of norms embraces such *corpora delicti* which are derived from corpus of hooliganism, therefore, in case a similar article is absent in the code of the given state, the offence would be qualified under an article anticipating responsibility for hooliganism. Such *corpora delicti* derived from corpus of hooliganism are: vandalism; worship hindrance; abuse of state symbols; abuse of corpse, grave or other burial place; unsanctioned groundless train lockup; cruelty to animals; deliberately false notification of danger. The third group of norms establishing responsibility for offences committed by hooligan indictment is not existed as separate articles of the criminal law and provided as an additional component to one or other articles of the criminal law. This component, as shown by the study of the criminal codes, may be denoted in three ways: 1) as an alternative constituent element of basic *corpus delicti* in disposition of respective article; 2) as a qualifying sign of a certain *corpus delicti*; 3) as a circumstance aggravating punishment as specified in general part of criminal code.

UDC 343.9.01

Yana Navaliana, *postgraduate student of the Academician V.Stashis Scientific Research Institute for Crime Studies of the National Academy of Law Sciences of Ukraine*

THE CONCEPT AND TYPES OF LATENT RAPES

The paper developed the concept of latent rapes and offers its definition. The concept of latency examines here. In the scientific literature one can find the definition of latency in terms of criminology, criminal procedure and criminology, but they still cause heated debate among criminologists. Most of the authors using two main features: “unknown” and “absence of statistical reporting” to determine the content of latency crime. Latency crime occurs when those persons directly involved in the scope of the criminal procedure, including victims, do not worry about its detection and prosecution. The paper examines the concept of rapes and the necessary conditions for prosecution for rape. Under latent rapes proposed to understand the rapes which did not inform the victim or other applicant, and as a result did not reflect the criminal justice statistics. Discusses the types of latent rape depending on typical situations and features of the behavior of criminals. This article describes the latent rapes in order to self-affirmation in the male role, latent rapes among youth groups, latent rapes of familiar women, latent rapes on the basis of paraphilia in the form of sadism, and latent rapes, due to the presence of psychopathic symptoms.

UDC 343.8

Viacheslav Polyah, *Applicant of the Academician V. Stashis Scientific Research Institute for Crime Studies of the National Academy of Law Sciences of Ukraine*

RESOCIALIZATION JUVENILES SENTENCED TO IMPRISONMENT: THE CONCEPT AND IMPORTANCE

Prevention of juvenile delinquency is one of the critical problems of Ukrainian society. Absolute numbers of juvenile delinquency, despite their gradual decrease, however, cause concern. Therefore, the task of reducing recidivism among juvenile today becomes even more crucial.

Various aspects of resocialization became the subject of research scientists such as V. Badyra, A. Betz, I. Bohatyriov, T. Denisova, A. Dzhuzha, O. Karaman, V. Liovochkin, A. Stepaniuk, V. Trubnikov, D. Yahunov, I. Yakovets and others. However, the problem re-socialization sentenced to imprisonment of minors is still not properly investigated for the following reasons: First, much of the scholars who dealt with the mentioned issue, limited to consideration of re-socialization in general form or in the context of execution of a certain kind; Secondly, a detailed examination underwent mostly related to adult resocialization of prisoners; Thirdly, research these issues were taken before or immediately after the adoption in 2003 of CEC of Ukraine, and therefore their results require reassessment given the time that has passed, and the development of the legal system of our country.

The purpose of this article is to summarize current scientific developments in previous views on the problem of re-socialization and clarification of the term in accordance with the characteristics of this category of persons sentenced to imprisonment as minors.

The current CEC of Ukraine in art. 6 provides a definition of re-socialization as a universal category that has the same value for all sentenced to imprisonment: resocialization – a deliberate recovery convicted in the social status of a full member of society; return it to the conventional self-regulation of social life in the community. Generalization of existing views on the re-socialization suggests that it is understood as: 1) the process of forming corrections or convict him positive traits and qualities that promote respect for human society, work, morals, customs, traditions and stimulate behavior without disabilities law or restructuring social qualities, ie, re-socialization; 2) a system of successive stages, cultural and educational activities that reflect positive action and results of subjective personal training convict and effectiveness of rehabilitation and educational institutions of the administration of the correctional system; 3) the result is to change the person.

Instead, due to the absence in most juveniles convicted of positive skills necessary for social life, we believe it inappropriate to use the term “re-socialization” respect the considered category, as against them the process of entering into society is unlikely to be repeated because of the complete absence of a positive social experience.

Conclusion:

1. Subject to specific categories of prisoners such as minors, it is advisable to introduce legislation and practice in the category of “socialization” instead of “resocialization”;

2. Socialization minors between serving his sentence should be defined as the formation of norms, ideals, values necessary for a successful life in society;

3. During the period of sentence activities to meet the socialization of convicted juveniles should be directed at developing these skills, qualities, knowledge and skills according to a model of social behavior.

UDC 343.364

Olena Romanushun, *Applicant of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

CHARACTERISTICS OF THE SYSTEM OF CRIMINAL PROTECTION ORDER ENFORCEMENT OF JUDGMENTS IN CRIMINAL PROCEEDINGS

The article aims to study the completeness and integrity of criminal protection order enforcement of judgments in criminal proceedings by means of a systematic approach that will enable the install components such protection, systemic links between them and define the concept of relevant sections of the system and of the Criminal Code Ukraine.

In our opinion, the analysis of criminal law as to their affiliation to ensure the protection order enforcement of judgments rendered by courts in criminal proceedings makes it possible to: 1) define the features of a systemic approach to criminal protection order enforcement of judgments in criminal proceedings; 2) identify and install components of the system. Based on the above, using a systematic approach to the study of the components of the criminal law of judicial decisions in criminal proceedings, to determine the appropriate system components should investigate offenses, the direct object of which is the order of execution of the judgment across jurisdictions; offenses, the direct object of which is the order of execution of the judgment in the criminal proceedings; General rules of the Criminal Code of Ukraine, establishing consequences criminal law in case of judicial decisions in criminal proceedings.

In determining the completeness of consolidation in the Criminal Code Ukraine system of criminal protection order enforcement of judgments in criminal proceedings, we note that the latter can be divided into three parts (of criminal law). The first group includes offenses that provide protection order enforcement of the judgment of the courts of all jurisdictions. The second group can include offenses that provide protection order enforcement of a judgment only to criminal proceedings. The third group consists of criminal law the General Part of the Criminal Code of Ukraine, establishing consequences criminal law in case of judicial decisions in criminal proceedings.

Thus, identified three components of the system of criminal protection of judicial decisions in criminal proceedings are complete and coherent unity of such criminal protection. Such a system must include rules, categories and concepts that are consistent with its other structural parts, such as the definition of system components provides further explore system-structural relations of elements of the system and identify problematic aspects in this area. It should be emphasized that the system of criminal protection order enforcement of judgments in criminal proceedings is an integral part of the criminal protection order enforcement of judgments of courts of all jurisdictions.

This notion of a system of criminal protection order enforcement of judgments in criminal proceedings may be defined as an ordered set of interrelated rules provided for in section II, IX, XII, XV General Part and Chapter XVIII of the Criminal Code of Ukraine, which form coherent unity criminal protection order enforcement of judgments in criminal proceedings.

This system aims to ensure a proper legislative procedure for enforcement of judgments in criminal proceedings following ways: by differentiating criminal liability for failure of judicial decisions depending on the type of the judgment; establishing criminal consequences of court rulings in criminal proceedings relating to the consideration of this legal fact as the basis for recovery of criminal proceedings for the offense and then sentence; consequences of non-judicial decisions in criminal proceedings related to the procedure of sentencing or parole from that which lies in the direction of the person for further punishment.

UDC 343.237

Angelina Soldatenko, *postgraduate student of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

DISSOCIATION OF INVOLVEMENT IS TO THE CRIME FROM PARTICIPATION

The article analyzes the relationship institutes belonging to a crime and complicity. In particular, once these institutions do not delimited, and involvement in the crime was regarded as complicity. Only at a certain stage of the criminal law itself and its involvement in certain types began to stand out in an independent penal concept.

In the Anglo-Saxon legal system involvement and is still considered a separate type of complicity in the crime. Some pre-revolutionary Russian criminologists and German scientists in the 19th century saw the involvement not independent and subordinate crime that can not be considered independent in criminal proceedings, but only in conjunction with a major encroachment in one proceeding.

In criminal law of Ukraine as complicity and involvement in crime are independent of criminal legal institutions, which have a common and characteristic only of each of them signs. Their research subject of this publication. If the promised concealment of the crime in advance – such act is aiding, i.e. complicity in the crime, if such act is not promised in advance is already involvement.

With the complicity of criminal liability is incurred by two or more persons; each of which should have the status of a subject of the offense. But the involvement provides two socially dangerous acts, each of which must occur independent criminal liability; there is no causal relationship in participation, with the exception of criminal connivance. In addition, the possible involvement with an already completed crime, initiated but not yet completed acts, acts that are at the stage of preparation to commit a crime (with the connivance of the crime). In section 6 of article 27 of the criminal code of Ukraine contains not complete, and only a fragmented list of certain types of involvement in the crime, a normative concept which is missing, so the signs of this institution remain contentious in the theory of criminal law. With the aim of improving the current law on criminal liability should at the legislative level to strengthen the understanding of not only compassion, but also involvement in the crime, her signs.

UDC 343.233:340.5:[343.611:343:613] (477)(045)

Natalia Tashlitska, *postgraduate student of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

VICTIMS CONSENT TO HARM IN THE CONTINENTAL LAW SYSTEM

The article is devoted to analysis of the Institute of victim consent in criminal law of continental legal system. The author conducted a study of the criminal legislation of the following countries: Austria, Belarus, Holland, Spain, Italy, Paraguay, Poland, Russian Federation, Salvador, San Marino, Federal Republic of Germany, Switzerland, Japan, etc.

Determined that questions of criminal-legal qualification of harm to the life, health, property with the victim consent does not have clear answer from the time of becoming law as such to this day. The victim consent always had an impact on the punishment for the offense, was and is the question in which faced two important interests of law: private and public, which in turn leads to his in-depth study in criminal law.

The author determined that in the criminal legislation of the countries of continental legal system the question of "victim consent" solved differently, by fixing in the framework of the General or Special parts. In countries such as Belarus, Italy, Poland, San Marino, the issue of "victim consent"

is considered in the framework of the General part of criminal law. In the criminal law of many countries the "victim consent" stipulated in the Special part, in particular, concerning liability for injury of life (euthanasia), health (physical injuries, organ transplantation, abortion, sterilization, sex-change surgeries, etc.). These countries include Austria, Holland, Spain, Paraguay, Poland, Russian Federation, Salvador, Federal Republic of Germany, Switzerland, Japan.

The conclusions about the feasibility of fixing norms in the General part of the Criminal Code of Ukraine, as is the case in Italy, San Marino, concerning exemption from criminal liability and not punishment the person who caused the harm with the victim consent.

Separately marked the fixing of the Institute of victim consent in the Criminal Code of many European countries in terms of mitigation of punishment for causing "by consent" of harm to life (euthanasia), health.

Determined that in the national scientific community is still ongoing the discussion on penal value and meaning of "consent of the victim". Most researchers consider this Institute in the light of the circumstances precluding crime and punishable act. Therefore, the introduction of the "victim consent" in the criminal legislation of Ukraine, should introduce a General rule which would contain an indication on causing damage with the victim consent as a circumstance precluding criminality.

UDC 341.641

Kostiantyn Savchuk, *Candidate of sciences (Law), Senior Researcher of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

Olena Melnichuk, *Candidate of sciences (Law), Senior Researcher of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

PERSPECTIVES FOR PROTECTION OF THE INTERESTS OF UKRAINE IN THE INTERNATIONAL COURT OF JUSTICE IN CONNECTION WITH THE AGGRESSION OF THE RUSSIAN FEDERATION

The article investigates the legal means to resolve the situation concerning the aggression of the Russian Federation on the east of Ukraine and the Crimea. The actions of the Russian Federation relating to the annexation of the territory of Autonomous Republic of Crimea and armed intervention and support of illegal armed groups in the eastern Ukraine are violation of international legal obligations of the Russian Federation under the UN Charter, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations 1970, the CSCE Helsinki Final Act 1975, the Treaty of Friendship and Cooperation between the Russian Federation and Ukraine 1997, as well as a number of other international agreements. We consider the practice of the International Court of Justice on similar cases in order to determine the facilities of Ukraine for the protection of it interests in this international court. The various legal and doctrinal approaches to the definition of "international dispute" are researched.

International legal mechanisms provided for in the Treaty of Friendship and Cooperation between the Russian Federation and Ukraine 1997, International Convention for the Suppression of the Financing of Terrorism, 1999 and others are considered.

From our point of view, the Ukrainian side should take advantage of the provisions of Article 24 of the International Convention for the Suppression of the Financing of Terrorism 1999, which provided in its provisions the right of state to appeal to the International Court of Justice if within six months from the date of the request for arbitration, the parties do not to agree on the organization of arbitration. Ukrainian side should offer the Russian Federation to negotiate about cease of its unlawful acts of financing terrorist groups in the Donetsk and Lugansk region, and in the case of Russia's projected refusal from these negotiations offer the Russian Federation to establish arbitration. It should pay particular attention to the preparation convincing evidence on the commission of the offense provided in Article 2 of the International Convention for the Suppression of the Financing of Terrorism 1999 by persons under the jurisdiction of Russian Federation. In so far as the dispute with Russia is primarily political rather than legal one, the application processing Ukraine in the International Court of Justice or even recognition by the International Court of Justice the violation the International Convention for the Suppression of the Financing of Terrorism 1999 by the Russian Federation does not mean the cessation of armed conflict in eastern Ukraine. However, the proceeding

of this case in the International Court of Justice can be an important step to transfer the confrontation in the East of Ukraine from military to the political and legal dimension and contribution to the peaceful settlement of the conflict.

UDC 628.171.034.2:352/354

Ihor Halkin, *Candidate of sciences (Law), Associate Professor of the National University of Water Management and Nature Resources Use*

PECULIARITIES OF EUROPEAN RIGHTS COURT JURISDICTION

The article deals with the peculiarities of European regional mechanism of protection and rehabilitation of human rights and liberties. It has been defined that European Convention on human rights and fundamental liberties recognized double function for the European court: first, to conduct individual supervision in case of awarding judgments about a certain right violation by the country-party to the Convention, second, to build up principles and standards of human rights protection.

An idea about lack of mutual tasks and obligations of High Treaty Relations is substantiated in the article. It has been investigated that European Court jurisdiction covers not only recourse about violation by the country-party to the Convention, but also applications filed by the persons who are the citizens of the countries not ratifying the Convention or other countries that do not comply with the obligations in a proper way.

The article analyses subject-matter jurisdiction, jurisdiction by subject range, territorial jurisdiction, and jurisdiction in time. The author also presents the idea that subject-matter jurisdiction of the European court is the most dynamic one since corresponding provisions of the Convention constantly acquire new interpretation due to the changes and development taking place in the Council of Europe.

In addition, challenging issues related to the jurisdiction in time have also been worked out. Pursuant to the provisions of the Convention, the court does not consider the filed applications concerning acts of human right violations which had occurred before the Convention came into force for the country-defendant. However, the Court practice shows that applications about "continued violations" can be an exception: when primary acts of violation specified in the application had happened before the Convention came into force for the country-defendant, but they defined the status of an applicant directly after the mentioned date. Thus Convention does not release the country-party to the Convention from the assumed obligations in connection with any violations that could have taken place before the mentioned document came into force.

To sum up, conducted scientific research builds up an idea about the fact that nowadays European Convention on human rights is considered to be one of the key international human rights organizations of the European system of protection of human rights.

UDC 340.5

Nataliya Davydova, *PhD, Associate Professor in University of Modern Knowledge*

CONSTITUTIONAL REGULATION OF RELATIONSHIPS IN EDUCATION SPHERE IN THE USA

The article reviews the fundamentals of American constitutional law and regulations of relationships in education. The U.S. Constitution does not contain any norms that directly influence educational institutions, but the First, Fifth and Fourteenth Amendments do apply, to substantial extent, to the relationships in education.

The federal Constitution is by far the most prominent and important source of individual liberties. The First Amendment protections for speech, press, and religion are often litigated in major court cases involving postsecondary institutions, as are the Fourteenth Amendment guarantees of due process and equal protection. The federal Constitution is the highest legal authority that exists. No other law, either state or federal, may conflict with its provisions.

The Constitution only secures rights against action by governments, state or federal. Consequently, a threshold question in every case involving individual constitutional rights in educational sphere is whether the challenged conduct is attributable to the government. This concept is called "state action" because most issues have concerned state, rather than federal government. Several Supreme Court decisions that help to define "state actor" are analyzed: *Marsh v. Alabama, Shelley v. Kraemer, Rendell-Baker v. Kohn, Burton v. Wilmington Parking Authority, Brentwood Academy v. Tennessee Secondary School Athletic Association.*

The Tenth Amendment makes explicit the idea that the federal government is limited to only the powers granted in the Constitution. It expresses the principle of federalism, which undergirds the entire plan of the original Constitution, by stating that the federal government possesses only those powers delegated to it by the states or the people. By the prevailing standard, the Constitution refers the regulation of educational relationship to the state legislature rather than the Congress, leaving the educational law predominantly on the States rather than Federal level. State constitutions and acts often have specific provisions establishing state colleges and universities or state college and university systems, and occasionally community college systems.

UDC 341.17+341.181

Serhii Kubiievych, *Candidate of Sciences (Law), Associate Professor of the International Open University of Human Development "Ukraine"*

STAGES OF FORMING AND PECULIARITIES OF PEACEFUL SETTLEMENT OF DISPUTES IN THE OSCE REGION

Preventive diplomacy and conflict prevention are key areas of OSCE action. Conflict prevention and crises management have become part and parcel of OSCE responsibilities. In the last years the OSCE has developed a range of institutions, mechanism and measures for peaceful settlement and crises management, and during that time the number of disputes and crises in the OSCE region has increased rather than decreased.

The author makes an effort to display some stages of developing the OSCE mechanisms and procedures. Therefore, the latter can be classified through some stages.

The first stage is dealing with building the European security system mainly containing a refuse and transition from bilateral to multilateral European security system in the 70's of XX century. Since then, the CSCE participating states travelled a long and stony road from their general statement on

peaceful dispute settlement in the Principles Decalogue of the 1975 Helsinki Final Act to the range of institutions, mechanisms and measures acted in the framework of the OSCE.

The second one has to do with holding the Conference for Security and Cooperation in Europe in the early 90's and dealing with peaceful dispute settlement meeting in Athens and Valletta. The 'Valletta Mechanism' on peaceful dispute settlement was more or less stillborn. Thus, the participating states tried to improve peaceful procedures of dispute settlement made before.

The third stage is reflected in the so-called 'Berlin Mechanism' relating to serious emergency situations has up to now been used only for times, mostly in connection with the Balkan conflict. But since 1991 this crises region has been permanently in the focus of the agendas of OSCE bodies.

It should be noted that during its history the 'Vienna Mechanism' or consultation and cooperation concerning unusual military activities has only been used for the purpose originally intended for. But since the 1992 Prague Council Meeting of the Foreign Ministers there has been a connection between this mechanism and the installation of fact-finding and monitoring missions. Thus, it is possible to speak of an indirect use of the 'Vienna Mechanism'.

The function of the 'Moscow Mechanism' of the Human dimension, which was used in the period immediately after its creation, seems to have been taken over by OSCE missions of long duration.

Finally, the significance of the shift of CSCE/OSCE activities from over-complicated mechanisms to the newly-invented instruments of crises management – especially to missions of long duration – shall be investigated, most of all in relation to their connection with the development of a new concept of security in the OSCE region.

UDC 341.215

Michael Otrosh, *Candidate of sciences (Law), Doctoral candidate of the Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine*

ON THE ISSUE OF THE STATUS OF THE CATHOLIC CHURCH IN INTERNATIONAL LAW

According to the Catholic doctrine, the Catholic Church was founded and headed by Jesus Christ, which He appointed to all mankind for his salvation and which contains all the fullness of the means of salvation (correct and complete confession of faith, execution of all sacraments, priestly ministry of ordained under apostolic succession). Jesus Christ governs the Catholic Church through the Pope and bishops who are in the canonical communion with him and therefore the Catholic Church is sometimes called Roman Catholic.

The Catholic Church is an organic unity of all individual (local and national) Catholic churches operating in the states. Roman canon law of the Church considers as an independent legal entity which has normative order similar to the state order, but excellent from it, despite the fact that the structural elements of the Church, ontological and theological, are consistent qualities of independence and sovereignty. In the context of participation in international relations Church in the Catholic doctrine is a subject of international law of special nature which in the force of its goals and means of achieving, structure and social nature differs from the state, which, however, does not detract from its international legal status.

Partly agreeing with this statement, it should at the same time be noted that the general conclusion of Catholic jurists that the Catholic Church is a subject of international law, but although the special nature does not comply with the actual state of affairs and contrary to modern international law with regard to the following obstacles. Firstly, the Catholic Church is only as the basis for its governing body – the Holy See, which, being a sovereign legal order, has a quality international legal personality that does not automatically mean the recognition of similar status for the entire Catholic Church at all, which it represents. From the other side, it would be contrary to both international diplomatic practice and approaches that have developed in international law in regard to the nature of

international law. It is known that the possession by international personality international legal is due with the acting provisions of international law, but not any other rules. Secondly, only states as the main subjects of international law should actually determine the range of other participants in international relations which will have the right on international law-making process. In this sense, the practice of establishment and maintenance of diplomatic relations, signing the Concordat, participation in international organizations and conferences as well as in the peaceful settlement of international disputes have shown the acknowledge of the status of a subject of international law exclusively under the Holy See, the specifics of which, as a sovereign formation, has resulted to the recognition ща their independent international and legal status. Thirdly, almost all the institutions of the Catholic Church, its governing bodies, are under the jurisdiction of sovereign states, the national law which deals with a separate (autonomous) Catholic Church, serving as a legal entity and an internal law, along with other organizations.

Hence, summing up the above, it can be positively said that the Catholic Church as a social institution and a special legal order is not a subject of international law and is only ideological basis for generally subject of international law – the Holy See, which represents the Catholic Church in the international arena.

UDC 341.231.1: 341.29

Oleksandr Kharchuk, *Candidate of Sciences (Law), Associate Professor of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

Kateryna Ozerova, *Student of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

ECONOMIC SANCTIONS AS A MEANS OF RESTORING INTERNATIONAL LEGITIMACY

Russian aggression not only violates international law order but threatens global security. As it is proved by a large number of well-known facts Russia's use of force against Ukraine clearly qualifies as a war of aggression under Article 3 of the United Nations General Assembly Resolution 3314 on the "Definition of Aggression", adopted in December 1974. According to Article 5 of this Resolution, "A war of aggression is a crime against international peace. Aggression gives rise to international responsibility".

In the situation when the Russian leadership cynically denies Russia's role in the war of aggression, sanctions against the aggressor state, imposed by the international community, become a tool for the enforcement of Russia's responsibility under international law. The basis for sanctions arises from the refusal of the subject that violates international law. The sanctions are directed to stop unlawful conduct and to fulfill obligations.

In the mechanism of resistance to the aggressor important place belongs economic means of influencing the wrongful acts of the Russian Federation. They should be combined with other measures of military, political, diplomatic character and not only national but also including international legal levels.

The aim of the paper is to expose the issue of efficiency and effectiveness of economic sanctions against the aggressor-state (Russian Federation).

After all, the key to the maintenance of international peace is coordinating of actions of the international community for the strengthening of international law. Therefore, the combination of a wide range of economic and trade international sanctions is the most effective mechanism for the maintenance of international peace and security. This mechanism is embodied through the adoption and realization of effective collective measures aimed to prevent and remove threats to peace and overcome the repetition of acts of aggression in the future.

UDC 341.123

Osama Mohamed Yousef Arar, *postgraduate student of the Koretsky Institute of state and law of National Academy of Sciences of Ukraine*

ISRAELI-PALESTINIAN PEACE PROCESS AND THE ESTABLISHMENT OF THE PALESTINIAN AUTHORITY IN LIGHT OF THE AGREEMENT "OSLO I"

September 13, 1993. in Washington, in the presence of the co-sponsors of the Madrid Conference (US and Russia) signed the "Declaration of Principles on Interim Self-organization" (the "Declaration of Principles"), also known as the agreement "Oslo I".

The purpose of the parties was the establishment of the Palestinian interim self-governing body for a transitional period not exceeding five years. Elections scheduled to be held no later than 9 months after the entry into force of the agreement. Their conduct was seen as a preparatory step towards the realization of the legitimate rights of the Palestinian people. At the same time the PLO pledged to accept the existence of Israel.

On September 28, 1996 Washington signed the Interim Agreement, which was called Oslo II. In accordance with the West Bank and Gaza Strip significantly extended the Palestinian Authority soon.

One of the main features of the agreement was also the position of the division of the West Bank into three areas, each with a different degree of responsibility on the part of Israel and the Palestinian Authority, including the field of "A", "B" and "C".

Approximately 62 % of the West Bank is in the zone "C", where Israel retains authority and control of design and construction.

After the murder in November 1995, Israeli Prime Minister Rabin, the implementation of the Palestinian-Israeli agreements started to brake. In question was the very ideology of the settlement.

At a meeting in the next year in Israel elections won by advocates of a more hard-line Benjamin Netanyahu, which led to strained relations between the Israeli government and the newly elected Palestinian Authority, led by Yasser Arafat.

Thus, the agreement "Oslo I" made a significant contribution to the solution of the Palestinian problem. With this agreement outlined specific steps to create a Palestinian state. However, due to Israel's position that the document has not been implemented.

UDC 341.176(4)

Nataliya Gorobets, *Doctoral Candidate of the of Kyiv University of Law of the National Academy of Sciences of Ukraine*

CONCEPT AND ESSENCE OF PROPERTY RIGHT WITHIN THE CONTEXT OF PROTOCOL 1 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS DATED 1950 AND EUROPEAN COURT OF JUSTICE PRACTICES

Building the state governed by the rule of law, social welfare and democracy is bound up with civilized proprietary rights settling. It stands to reason that right to freedom in property possession was fixed by one of fundamental European international agreements – European Convention on Human Rights and Fundamental Freedoms dated 1950 (hereinafter referred to as ECHR) (Art. 1 Protocol 1). As is well-known, complaints concerning property law infringement take third place among all the complaints filed to the European Court of Justice (hereinafter referred to as ECJ). In

fact, one of the first cases against Ukraine, examined at the European Court of Justice, was also exactly connected with property right infringement. Further on over thirty such cases against Ukraine were subject to investigation. In connection with above mentioned, it is pending for national science researching modern international law to perform integrated study of European Court of Justice practice within the context of property right protection and freedom property possession.

With European Convention on Human Rights and Fundamental Freedoms ratification on the seventeenth of July 1997, Ukraine acknowledged not only the right for "peaceful possession of property", but in compliance with the provisions of the Art. 1 Protocol № 1 to Convention also declared the right of individuals' and legal persons' to sue legal redress at the European Court of Justice seeking for protection of their infringed rights and freedoms protected by Convention with regards to proprietary right exercising.

Article objective is to study the concept and essence of proprietary right within the context of Protocol 1 to European Convention on Human Rights and Fundamental Freedoms and established practice of the European Court of Justice.

Art. 1 Protocol № 1 to Convention provides to prevent arbitrary capture of property, its confiscation, expropriation and other violations of peaceful use of property principle which are quite commonly resorted or plasticized by state governments. In compliance with the Court's case law, the idea of "property" includes both "actual property", and property holding, comprising debt claims. Property subject arises only in case the person can claim for corresponding property, i.e. have the right for it. On its own terms proprietary right can be considered based on the content of Art. 1 Protocol № 1, provided that such a right is to be specific and applications submitted to the European Court of Justice must contain its appropriate identification. On the other hand, Art. 1 Protocol № 1 provisions do not secure any right to become an owner of any given property. Property use rights cannot be absolute, thus they can be restricted by the state. As it is shown by European Court of Justice practice analysis, authorities most commonly intervening proprietary rights are state authorities, in particular executive branch authorities, sometimes law enforcement authorities, restricting rights through enactments or unlawful judgments, whereas Art. 1 Protocol № 1 prohibits any unjustifiable interference of the state authorities.

In such a way, author came to conclusions that Art. 1 Protocol № 1 European Court of Justice case law application field is under development for the time being, and further on, considering increasing amount of cases investigated in the national courts, the number of judicial recourses to European Court of Justice will also increase. Thereby, we believe that it is of critical importance to accept European body of law justice implementation principles in timely manner and prevent negative case base formation with regards to European Convention on Human Rights and Fundamental Freedoms provisions adherence in Ukraine.

UDC 341: 343.34: 316.774

Olga Grytsun, *postgraduate student of the Institute of International Relations of Taras Shevchenko National University of Kyiv*

THE ISSUE OF INTERNATIONAL LEGAL REGULATION OF CYBER TERRORISM

The article studies the issue, connected with the development of international legal regulation of states' cooperation, aimed at combating cyber terrorism, and the degree of elaboration of the conceptual apparatus in this field.

The topicality of the research subject is beyond any doubt due to the fact that cyber terrorism has been recognized by the international community as one of the biggest threats in the field of international cyber security.

Besides, the article provides the analysis of the functioning and relevant documents of international organizations, related to the issue, connected with the usage of cyber space for terrorist purposes and the existing theoretical approaches to comprehension of it.

The theoretical approaches to comprehension of the cyber terrorism concept, suggested by V. Vasenin, V. Nedilnichenko, M. Gerke, A. Kruts'kyh, A. Yelyakov, A. Sal'nykov, V. Yashchenko and J. Bird are also being highlighted in the article.

It is worth noting, that currently there is no generally accepted definition of this concept. There are various definitions, found in the theory of international law and international legal documents, they include: "cyberterrorism", "information terrorism" and "computer terrorism". Since cyber terrorism is a transnational notion, and its consequences can be extended to the territory of several states, it is relevant to create the international legal mechanisms, which could combat this phenomenon, as well as to develop and implement the legal security measures in cyber space.

In addition, the article provides a brief overview of the functioning of the following organizations: Group of Eight (G 8), the United Nations, North Atlantic Treaty Organization, the Organization for Security and Cooperation in Europe, Council of Europe and the Shanghai Cooperation Organisation in the field of ensuring international information security.

The paper offers a detailed analysis of the principles of Agreement among the Governments of the Shanghai Cooperation Organization Member States on Cooperation in the Field of Ensuring International Information Security, dated June 16, 2009 as the only existing international document, which secures the definition of the cyber terrorism phenomenon, its features and sources of threat. The Agreement among the Governments of the SCO Member States has also consolidated the list of areas of states' cooperation in the field of international cyber security.

The study of conceptual views on comprehension of the cyber terrorism concept is no less urgent, given the need to form a unified approach to its regulation at the international level. Therefore, the article comprises an analysis of the provisions of the Concept of the Convention on International Information Security, which was presented at the London Conference on Cyberspace in 2011, as well as the principles of the "Global Treaty on Cybersecurity and Cybercrime" project.

Having analyzed the results of the research, the author concludes that the unified terminological framework and the unified approach to comprehension of the cyber terrorism issue have not been formed yet. No country in the world is able to deal with the threat of cyber terrorism on its own, given the magnitude of its effect and its transnational nature. Therefore, the need for juridical regulation of this issue at the international level, as well as the development of a common approach to the comprehension of and combating against cyber terrorism, and the elaboration of mechanisms for international cooperation and experience exchange are the key factors of states' cooperation that require international coordination of their efforts.

UDC 347.6

Oksana Melnychenko, *Applicant of the Kyiv University of Law of the National Academy of Sciences of Ukraine*

INTERNATIONAL TREATIES IN THE SYSTEM OF FAMILY LEGISLATION OF UKRAINE AND EU

The article deals with the system of international rules in the field of matrimonial legislation of Ukraine and EU, the place of international treaties in this system, particularly, treaties on a legal aid. The attention is placed on the efforts to unify the legislation of EU, the creation of the effective regulation of the Council of the EU on jurisdiction, applicable law, recognition and enforcement of legal decisions concerning the legal regime of matrimonial property and possible consequences of this way of regulation of matrimonial relations between spouses. Thus, gradual assimilation and globalization in different spheres of social relations in EU will promote the unification of EU matrimonial legislation. The question of interactive cooperation and contradictions of the rules of Anglo-Saxon, Roman legal system with the rules of religious legal system in the sphere of family law is still problematic.

UDC 341.215

Volodymyr Otrosh, *senior prosecutor of the office of public prosecutor of the city of Kyiv*

THE CONCEPT OF CITIZENSHIP IN THE INTERNATIONAL LAW AND FEATURES OF ITS ACQUIRING AND LOSS IN THE STATES AND IN THE ORDER OF MALTA

Under the citizenship is meant a stable legal relationship between individual and state, which manifests itself in a clearly defined law of each country the totality of their mutual rights and obligations. In the law of states there are different terms to identify affiliation an natural person to the state. In the countries with a republican form of government is usually used the term "society" and in the countries with a monarchical form of government are used the terms "nationality" and "citizenship".

A notion of citizenship is primarily governed by the law of a particular subject of international law, which is not a state, but acting on the international scene equally with it. The latter category includes the subjects of international law, such as the Sovereign Military Hospitaller Order of St. John of Jerusalem, of Rhodes and of Malta, which is also known as the Order of Malta. By establishing a procedure for acquiring citizenship these subjects take into account the generally recognized principles of international law and international custom, as well as multilateral and bilateral agreements, the parties to which they may be.

The main and most common way of acquiring citizenship is the acquiring of citizenship at birth. Since the Order of Malta does not have its own territory and population, its citizenship, unlike secular states, is acquired not on the basis of the principles of "jus soli" or "jus sanguinis", but only on the basis of the principle of "jus officii", that is due to occupation of the respective position, therefore, the order citizenship usually has the knights (chief body of the Order) and diplomats of the Order Malta, as well as an exception for the persons to whom for particular awards to the Order grants the Order citizenship.

As for the loss of citizenship, we can distinguish three forms: automatic loss of citizenship; renunciation of citizenship; deprivation of citizenship. With the acquiring and loss of citizenship is closely related the issue of dual and multiple nationalities, that an individual has a citizenship of two or more states. All persons having the nationality of Malta exclusively on the basis of "jus officii", that is, by virtue of occupying positions in the Order and this Order's leadership and diplomats of the Order of Malta, both are (or appeared) nationals of a State in which citizenship they have got at birth based on the principles of "jus soli" or "jus sanguinis". Thus, all of them are persons with dual citizenship (unless they renounced the citizenship of a secular state), but the negative consequences of this legal status does not occur because the factual and legal relationship they, being mostly in elderly age, have only with the Order of Malta.

BOGUSLAW BANASZAK

Boguslav Banashak, *Prof. Dr. hab. Dr. h.c.multi, Dean of the law and administration faculty of Zielona Gora University (Poland), Honorary doctor of KUL of NASU*

CONTEMPORARY PARLIAMENTS IN EUROPA

1. Structure of the parliament. A dispute over bicameralism

Ever since the beginnings of the contemporary democratic state the structure of the parliament has been a hotly debated issue. In the last two centuries various solutions have been adopted and the number of parliamentary chambers varied between two and even five, two being the most commonly adopted structure. Montesquieu recommended a parliament where two chambers could counteract each other; one chamber representing the people and the other – the individuals distinguished by their birth, wealth or occupied positions. The idea was later elaborated by A. Hamilton, who maintained that legislature tends to predominate in the system of separation of powers and to minimize it, it is necessary to divide the parliament into two chambers. This view was accepted and elaborated by many eminent constitutionalists. The arguments advocating a bicameral parliament quoted its following advantages:

1/ Enhancing the principle of separation of powers

2/ Making better law thanks to more comprehensive discussion of legal acts

3/ Continuation of long-standing traditions in many states

4/ Better representation of the people in the constituents of federal states

A unicameral parliament in federal states could lead to majorisation of the federal states (states, cantons) with a smaller number of residents, and the parliament would represent interests of the whole entity organized into a federation. The other chamber provides for a dualism of representation at the central level and more effective consideration of interests of the federation's constituents.

The opponents of bicameralism (and multicameralism in general) bring up the following arguments:

1/ Bicameralism weakens the executive and causes conflicts within it.

2/ This was succinctly rendered by B. Franklin, who compared a bicameral parliament to a cart drawn by horses into two opposite directions.

3/ In the unitary state there are no clearly distinguished interests justifying the existence of the other chamber.

4/ The other chamber lengthens the legislative process.

5/ The tradition of existence of the other chamber itself does not prove that it is of any benefit to the community.

2. Modification of the parliament's functions resulting from the integration processes in the European Union

Apart from the traditional functions: defining the basis of the political system, legislation, creation and review, the doctrine of constitutional law increasingly more frequently distinguishes a new function of parliaments of EU member states: participation in creating community (European) law. The reason for distinguishing this function is the fact that while the process of creating community law is based on the decisions made by executive bodes, national parliaments play an advisory role in the process (and in practice the role is played by their specialized bodies, which frequently become great European commissions).

1/ Legislative Function

It results from the principle of the division of powers. Generally, the parliament adopts the statutes, makes amendments to the Constitution and in some countries authorizes the head of the state – by meanings of an act – to ratify and terminate certain international agreements. Constitution making and amendment procedure are often classified as a separate system – forming function. As long as the making and amending of a constitution is equivalent with the adoption of a statute (even in a special procedure), such division is regarded as redundant.

It should be underlined that the EU law cannot be discussed in isolation from the internal laws of its member states. It is created by the representatives of individual member states legitimised by the binding constitutions. EU does not replace the states but the states remain – as formulated by the German Federal Constitutional Tribunal – "the lords of the treaties". The Tribunal reserved the right to investigate "whether the legal acts of the European institutions and organisations remain within the limits of the ceded sovereign laws and do not exceed them"[1]. Similar attitude admitting supervision of constitutionality of the treaties constituting the EU primary law was adopted by constitutional tribunals in[2] and[3] also. Polish Constitutional Tribunal stated: "Establishment treaties are international agreements. The sovereign parties to these agreements are Member States. They independently and in accordance with their constitutions ratify the treaties and have at their disposal the right to terminate them"[4].

In this context the issue of resolving conflicts between the constitutions and legal acts and the Community primary and derivative law in the practice of member states' political systems is exceptionally interesting. The EU law does not include any provisions concerning the resolution of conflicts between it and the internal law of the member states. It should be added here that as early as in the 1960s the European Tribunal of Justice resolved that the superiority of the EU law is absolute and does not depend on the rank of the internal law norm or their temporal sequence. Besides, the uniformity of the EU law stipulates that it must be uniformly applied in all the member states and therefore its interpretation is reserved for the European Tribunal of Justice as it would be unacceptable that in individual member states their agencies, and especially courts, should interpret the law, which would cause chaos. Therefore, in the case when a member state's legal system retains the norms contradicting the Community law, the Tribunal may declare that it does not meet the requirements resulting from the treaties constituting the EU. Such ruling, however, does not entail direct legal consequences and the elimination of the legal norms conflicting with the Community law rests within the competence of a given state – an EU member.

In the case of conflict between the Community law and the constitution, courts and other legal institutions implementing the constitution attempt to use the interpretation favouring the EU law. But, as stated the "the interpretation favouring the EU law has its limits. In cannot after all lead to results not in accordance with the Constitution"[5].

If, however, the contradictions cannot be removed, two solutions are available: either, due to the superiority of the constitution, the conflicting norms of the Community law are not enforced (which in the case of the primary law denotes the refusal to ratify the treaty which belongs to it or the denunciation of the ratified treaty) or – which is a much more frequent case – a constitution is modified before a EU regulation comes in force, which aims at ensuring the effectiveness of the Community law and the process of European integration. The above is exemplified by the modifications of several constitutions (French, German, Belgian and Spanish) performed to facilitate the ratification of the Maastricht Treaty. An interesting solution was adopted in. International treaties discordant with the constitution may be incorporated into it by a majority of votes of the members of the parliament (two thirds), which practically denotes modifying the constitution. Constitutions are modified even when its provisions collide with the derivative law (e.g. in).

In the practice of the political systems of the member states, the jurisdiction of constitutional courts, where they exist, or supreme courts attributes the EU law with superiority over internal regulations of a lower rank than the constitution, which has been based not so much on the EU law and the jurisdiction of the Tribunal but on the constitutional norms[6]. In, where there is no constitution, in the early 1990s the House of Lords advocated the non-application of the internal law if it conflicted with the EU law. The superiority of the Community law over the constitution if both cannot be reconciled denotes that "the restriction of the constitutional laws below the standards resulting from the international norms in relation to a ratified international agreement or a law resolved by an international organisation should not be admissible"[7].

The constitutions of the EU member states and the judicial decisions of courts do not decide about the results of the principle of the superiority of the Community law and it is not clear whether the application of a regulation conflicting with the agreement of that category is only suspended or whether the regulation is invalid or ineffective. The analysis of judicial decisions prompts the conclusion that an internal law regulation which is not applied due to the superiority of the Community law still remains a part of the legal system and will be applied when the provisions of the Community law cease to be binding in the country.

In this context the following view expressed by the Polish Constitutional Tribunal should be quoted: "In the light of the constitutional principle of the priority of Community law over statutory norms (art. 92 par. 2 and 3 of the Constitution), if there are no doubts as to the content of the norms of Community law, the court should refuse to apply the provision of the statute not in conformity to this norm and apply directly the provision of Community law. The court does not adjudicate in this case on repealing the norm of national law but only refuses to apply it in the scope in which it is obliged to give priority to the norm of Community law. The legal act in question is not affected by invalidity, it is still binding and is applied in the scope not covered by the norms of Community law. If however, it is not possible to apply directly the norms of Community law, the court should seek the possibility of an interpretation of national law in accordance with the Community law. In the case of the appearance of interpretative doubts in relation to Community law, the court should turn to the European Court of justice with a prejudicial question"[8].

It follows from the discussion so far that the constitutions of the EU member states have retained their legal significance. Thus, the existing notional apparatus and research methods remain still valid, while the research of the constitutional law, including comparative research, makes sense. The member states, facing the same or similar external challenges and internal problems, solve them not only with the aid of the EU institutions but also adopting in their internal legal systems certain systemic measures verified in other member states. It would also be interesting to examine the reasons of rejecting the solutions present in the constitutions of other EU member states.

2/ Creative Function

Itis performed by the parliament through appointment and dismissal of various state bodies and their members, as well as holding them accountable for their activities. First of all, the parliament takes part in the process of establishing the government.

3/ Controlling Function

The performance of the controlling function by the parliament is – besides the legislative function – the essence of the parliament's activity in a democratic state ruled by law. The parliament exercises control over the activities of the executive within the scope specified by the constitution and statutes. The controlling function is performed not only by the said chamber *in pleno*, but also through the activities of committees and deputies themselves. The subject of the control is the activity of the government concerning internal affairs and foreign policy of the State in the field not reserved to other state organs and local government.

The parliament's supervision procedure consists of two forms of control – general and particular.

– The general control contains demanding information on a given issue from a Government member (in written or in oral form) at the sitting of the parliament or a committee.

– The particular forms of the parliament's supervisory function consist of a control performed by an investigative committee, an individual control exercised by the deputies and a control over budget performance(the parliament considers the report on the implementation of the budget together with the information on the condition of the State debt, presented by the government).

As result of control performed by the parliament, measures can be taken such as dismissal of the whole government in consequence of a vote of non-confidence or of an individual from a State post

4/ Cooperation in the Process of Making of the EU Law

The doctrine of the constitutional law very often distinguishes the cooperation in the process of making EU law as another function of the parliament. This function can be defined also as a legislative one, with some elements of the controlling function, and as a way to compensate national parliaments for the loss of some of their legislative competencies in favour of EU institutions. It is estimated that in the course of the European integration, the parliaments of the EU member states lost about 2/3 of their former legislative powers, which were moved to the European governing level. In conclusion, the traditional principle of the division of powers has been modified, since the executive power in the EU belongs to the Council of the EU, consisting of representatives of the national

governments. This way a law made by the EU institution is in fact a law made by the executive authority and not by the parliament traditionally meant to perform a legislative function. In the beginning of the 90ties, the European Parliament adopted two resolutions providing institutional possibilities of influencing the legislative process at the EU level and therefore strengthening the position of national parliaments and preventing "the lack of democracy". The latest act providing some principles and requirements in the Treaty of Lisbon.

It should be emphasized that since the essence of the legislative function is the possibility of influencing the shape of the law-binding in the country, so the powers of the parliament relating to influencing the content of the position adopted by the given state in the forum of the Council of the UE should be included within this function.

3. The role of national parliaments in EU

Articles 5.3, 10.2 and 12 TEU, as well as Protocol No 1 and Protocol No 2 strengthened the powers of national parliaments and give them some new and rights. The most important Treaty of Lisbon provision on the role of national parliaments within the EU is Article 12 TEU which states that national Parliaments contribute actively to the good functioning of the Union.

The new provisions give national parliaments an opportunity to play a more active role within the EU, but they have not caused national parliaments as key actors within the European polity. The Treaty established no institutional status to national parliaments. In fact the new rules has only fostered the dialogue between national legislators and institutions of the Union.

1/ National parliaments should be informed by the EU organs by having submitted all legislative drafts. They can still be adopted regardless of oppositionfrom national parliaments.

2/ The early warning mechanism

Although in 2011 there have been given 64 reasoned opinions by national parliaments to 28 different legislative proposals on the Union level, neither a "yellow" or an "orange" card procedure had to be initiated. These are following reasons responsible for this:

(1) Coordination between national parliaments is insufficient. Each parliament uses its own internal procedure for applying the mechanism.

(2) The foreseen time periods are prohibitively short in order to achieve parliamentary consensus on an international level.

(3) The early warning mechanism cannot be perceived as the fulfillment of a procedural function as it can only be used by national parliaments at the tail end of the decision making process.

3/ The extension of the information mechanism concerning decisions of European Council.

In comparison to the Amsterdam Treaty Protocol on the Role of National Parliaments in the European Union, Protocol No 1 contains two elements, which have been considerably improved.

(1) First of all, the catalogue of documents with which national parliaments are to be provided has been substantially extended. Currently, Protocol No 1 requires the provision of: Commission consultation documents, the annual legislative programme; draft legislative acts (regardless of whether they are provided by the Commission, initiated by a group of Member States or the European Parliament or requested by the CJEU, the European Central Bank or the European Investment Bank; Council agendas; minutes and the annual report of the Court of Auditors.

(2) The second and most significant improvement is the commitment to transfer adequate documents in all official languages directly to national parliaments.

4. National parliaments and EU foreign policy

National parliaments have a crucial position, when an international agreement has to be concluded as "mixed agreement". This is usually necessary when an international treaty requires that Member States and the Union sign and ratify it because the allocation of competences between them is shared or unclear. In summary, this seems to remain the only situation where one can clearly argue that a unified policy of the Union in a binding form exists and national parliaments, by blocking the required national ratification, do have direct influence on whether the relevant text will come into force or not.

Polish example:

From the point of view of the principle of sovereignty a very significant regulation is contained in Article 90 of the Constitution. The art. 90 states:

"1. The Republic of Poland, by virtue of international agreements, delegates to an international organization or international institution the competence of organs of State authority in relation to certain matters".

2. A statute, granting consent for ratification of an international agreement referred to in para.1, shall be passed by the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators.

3. Granting of consent for ratification of such agreement may also be passed by a nationwide referendum.

4. Any resolution in respect of the choice of procedure for granting consent to ratification shall be taken by the Sejm by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies.

This regulation allows only to delegate the competences but not to limit the sovereignty. The Constitutional Tribunal has stated: "The Constitution remains 'the supreme law of the Republic of Poland' in relation to all international agreements, including agreements delegating competence. In particular […] there could not come about a delegating of competence to the extend that would cause Poland not to be able to function as a sovereign and democratic state. Furthermore, the limiting of the scope of delegating to 'certain matters' means a prohibition on delegating: firstly, the entirely of the competence of a given organ; secondly, competence in the entirely of matters in a given field; and thirdly, competence as to the essence of matters defining the management of a given organ of state authority"[9].

5. The future of national parliaments within EU

The development of European integration also stimulates the questions concerning the future of national parliaments and the future of the classically understood internal law created by them. The future is not very promising if it were assumed that "the notion of the constitution, at least in its wide meaning, may be transformed onto the supranational level, onto the legal order of the European Community, which emerged from the transfer of the national sovereign laws as the Community increasingly takes over the functions of the states and thus increasingly more intensively substitutes a functional state"[10]. This proposal corresponds with the idea of emergence of a new decision-making subject in the EU, i.e. the citizens of the Union[11]. But are these premises still relevant?

The answer requires defining the character of the EU and the role of the EU law in the member states' legal systems. As to the former issue, the EU is not a state nor is it an entity resembling a state. It is composed of member states, which transfer their competence in the matters defined by treaties. The constitutional regulations in many member states allow only to delegate the competences but not to limit the sovereignty.

As has been aptly noted by Polish legal commentators dealing with EU law, "the lack in the treaty materials of any clear delimitation as to the EU institutions' powers to legislate, in effect allows them to enact secondary law on the basis of competencies that arise under primary Community law. This occurs by applying a teleological interpretation enabling the EU […] to so function notwithstanding the absence of any specific treaty authorization. One can scarcely fail to note here, that such a *modus operandi* represents a serious challenge to the sovereignty of the Member States"[12].

Perceiving this risk, the Constitutional Tribunal has held that: „Each international organization is a secondary subject whose functioning is dependent on the will of member states. The Member States of the European Union, therefore, retain the right to assess whether the organs managing the European Community are acting within the frameworks of the delegated competences and the principles of subsidiarity and proportionality. Regulations passed in the contravention of these frameworks are not covered by the principle of the primacy of Community law"[13].

In this context another opinion occurring in legal literature could be quoted here "It appears that the future of national parliaments within the European Union entirely depends upon the future of the European Union itself. More Europeanization heading towards a federal European state […] will mean less power for national parliaments. And vice versa: the emergence of stronger interests of Member States within European integration will increase the importance of national parliaments as European actors"[14].

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[1] Entscheidungen des Bundesverfassungsgerichts. Amtliche Sammlung vol. 89, p. 155.

[2] More about the subject cf. A. Oppenheimer (ed.) The Relationship between Community Law and national Law: The Cases Cambridge 1994, p. 630.

[3] *Cf. A. E. de Noriega* A Dissident Voice: The Spanish Constitutional Court Case Law on European Integration European Public Law, vol. 5, z. 2, p. 297.

[4] OTK ZU Nr 5/A/2005, pos. 49.

[5] OTK ZU Nr 5/A/2005, pos. 49.

[6] As done by the Spanish Constitutional Tribunal, cf. W. Czapliński Członkostwo w Unii Europejskiej a suwerenność państwowa in: E. Popławska (ed.) Konstytucja..., p. 133.

[7] *Policastro P.* Prawa podstawowe..., p. 346.

[8] OTK ZU Nr 11/A/2006, pos. 177.

[9] OTK ZU Nr 5/A/2005, pos. 49.

[10] *Arnold R.* Perspektywy prawne powstania konstytucji europejskiej Państwo i Prawo 7/2000, p. 36.

[11] *Pernice Cf.* Europaisches und nationales Verfassungsrecht VVdStRL z. 60 (2001), p. 171.

[12] *Tkaczyński J. W., Potorski R., Willa R.* Unia Europejska. Wybrane aspekty ustrojowe. Toruń 2007, p. 126–127.

[13] OTK ZU Nr 5/A/2005, poz. 49.

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ATTILA PÉTERFALVI

Attila Peterfalvi, *Head of National department on data protection and freedom of information, Ombudsman of Hungarian parliament on data protection and freedom of information (1996–2008 Hungary), Doctor, Honorary Doctor of KUL of NASU*

TRANSPARENCY IN DEFENCE ADMINISTRATION
(PhD. Thesis)

1. INTRODUCTION

The democratic transition of the 1990's opened a new chapter in Hungary's history. Comprehensive changes were introduced in society, politics and the country's economy, which had a significant impact on the institutional system's characteristics[1].

Public administration, in a system based on the rule of law and the separation of powers, is part of the executive branch, which operates as an independent power. Its specific tasks extend over all sectors of social and economic life. From an organisational point of view, it is composed by all state institutions exercising public authority[2].

The definition what is meant by "Defence administration" is contained in Government Regulation 290/2011 (XII. 22). In this introduction, it appears necessary to note that among the tasks listed in this definition, I focus on the examination of disaster management institutions. In the literature, police forces are also included in the larger definition of safety defence administrations, therefore, the term "defence administration" can also be used to designate them.

Defence administration, as part of the overall public administration, follow the principles of the social division of labour. From a functional point of view, they serve the various branches of public administration, while at the same time representing their own administrative tool and public management technique[3]. Though I chose to study the implementation of transparency in defence organisations, this task must also take data protection aspects into close account. The dual sides of information rights cannot be separated but can only be approached in relation to one another. Data protection and transparency are both deduced from the academic study of the fundamental human rights system.

The disclosure of data of public interest (freedom of information) has been a constitutional freedom, in, since 1989. Its function is to guarantee the right to control of the state power for citizens. "Information is vital. An adequate level of information is a condition for citizens' freedom, which it also improves"[4].

In the course of the present dissertation, in order to reach the set goal, this interdependence has been treated with emphasis, so that this work's conclusions could always be attached to the implementation or the violation of human rights.

In a way, this thesis is an attempt of evaluating the level of transparency and data protection that has been achieved by defence administration organisations. I undertook to reach this goal by going through the following steps:

– Describing the main developments under defence administration organisations following the democratic transition, and their connection and place in the processing of public administration tasks;

– Analysing and shedding light on the legal situation of the development of data protection, data safety and transparency, while pointing out the specificities of defence administration;

– Based on the Fundamental Law and other legal provisions, analysing police and disaster management authorities' achievements in the field of information rights, including both potential negative and positive aspects, formulating proposals in the interest of ending putative negative practices;

– Analysing both the contents and functioning of the notion of safety, security policy, and information rights to find out common elements and relations that influence the practice of transparency, either in a reinforcing or in a weakening way;

– Analysing and demonstrating the system of administrative qualification and practice at different institutional levels, the transparency of their data processing operations, and the practical implementation of access to information of public interest;

– Investigating contradictions constituting obstacles to the implementation of the transparency principle;

– Devising proposals that can support the complex implementation of data protection, data safety and transparency in public safety organisation.

2. HYPOTHESIS, METHODOLOGY AND LIMITATIONS OF THE PRESENT STUDY

According to Section VI, paragraph 2 of 's Fundamental Law: "Every person shall have the right to the protection of his or her personal data, and to access and disseminate data of public interest." According to the National Avowal contained in the Fundamental Law: "[…] democracy is only possible where the State serves its citizens and administers their affairs in an equitable manner, without prejudice or abuse"

Based on the above, constitutional law requires of the general and overall functioning of a democratic state serving its citizens that it puts into practice, in the frame of its public tasks and duties, the principles of transparency and of integrity in public life. Public procedures and decision-making processes should take place in an unbiased and impartial way.

The fundamental right to access and dissemination of data of public interest, take place besides setting the conditions for the exercise of freedom of speech, actually also helps ensure the enforcement of the above. Based on the quotes from the Fundamental Law, and on the division of labour among public administrations, defence administration is in charge of public services. In the frame of these activities, data of public interest is being processed. The Fundamental Law, and other related legal norms, prescribe the public availability of such data.

Part of the data processed by institutions providing public services can be classified, either as a consequence of legal provisions, such as rules on national defence, national security and criminal investigations, or by authorized civil servants. Such a classification restricts access to data of public interest. The Law does not provide for discretional classification. Yet, in my work as a public authority, I have come across some cases where data controllers attempted to oppose the disclosure of data of public interest, and neglect their public relations duties. Safety defence administration can easily find arguments that are accepted by a large share of the population to support such kind of behaviour: they argue that their goal is the protection of society, the repression of crimes the management of disasters. Yet even if these arguments can be found acceptable by the people, they are contrary to the duty of transparency, and can be an obstacle towards its implementation.

The above clearly shows the contradiction between information rights duties (both data protection and freedom of information), and the way transparency has been implemented by the organization of defence administration.

The following hypothesis was formulated in order to help achieve the goal set by this study:

According to my hypothesis, defence administrations fulfill peculiar duties among the public administration.

Many of their activities contain elements that have an impact on public interests from a social point of view, and generate data of public interest.

The responsibility to implement transparency lies on the head of the given organisation, who has general (commanding) powers over his subordinates' work.

At the same time, I formulate the opinion that there exists a danger for transparency to become its own goal, thereby creating obstacles towards legitimate requests for information of public interest. In the frame of this study, I will confirm or debunk presumptions that on the one hand deny the spread of transparency and data protection onto safety defence administrations, or on the other hand believe that those principles can only be implemented in a restricted manner. I also presume that transparency as a value has suffered from the spirit of legal developments following the 9/11 terrorist attacks, which strongly emphasized national and international political will towards stronger security over other priorities. There may thus be data protection and classification requirements obstacles towards the constitutional interest of transparency.

Through the study of the historical evolution of data protection, data security, and transparency, I debunk the opinions that deny the possibility to implement transparency requirements in the field of public safety, or assert that such an implementation can only be of limited scope.

Depending on conscious efforts by police and disaster management authorities to establish a balance between data protection and transparency, the thesis demonstrates that the possibility for these various authorities to follow legal requirements and allow wide-spread disclosure of information of public interest can be achieved in various shapes and depths, on a case by case basis.

Based on observations from the field of safety defence administration, the thesis shall attempt to prove the statement according to which it is possible to balance the right to classify specific documents with the principle of transparency, in a way that guarantees the enforcement of constitutional freedoms.

Assuming that sectorial, national, territorial and local authorities strive for maintaining of the unified legal requirements of data protection and transparency, the thesis analyses the characteristics of various institutions' work in this direction. Based on the conclusions of this analysis, the possibility will be demonstrated to put the contradiction between data protection and transparency into perspective.

In order to fulfill the goals set out for this study, the thesis strives to apply the methodology principles of scientific research, which can be summarized by the following list:

– General comparative chronological investigation;

– Situation analysis and commenting based on analysis and synthesis, together with the determination of conclusions and proposals;

– Study of relevant national and international scientific literature and legal norms;

– Use of partial research results for scientific publications and conferences;

– Next to using document analysis methods, I have strived systematically to underpin my research with scientific consultations and the use of interviews.

Rethinking the methodological aspects of this work proved to be necessary over the course of the research. This was due to the fact that background literature on defence administration, data protection and data transparency are not unified. However, references on data protection and freedom of information in defence administrations are incredibly limited. As a consequence, I have had to increase the importance of looking for and analysing practical experiences on the field, notably through interviews and relevant consultations.

Over the course of this course, I have come to the realisation that it is not desirable to extend the analysis over all public safety institutions. Indeed, the activities and documents of both civil and military defence organisations are, for the great majority of them, classified. This fact would have greatly reduced the diffusion of this dissertation, as its contents would have been available only to a restricted group.

3. THE PLACE, ROLE AND TASKS OF DEFENCE ADMINISTRATIONS

Public administrations form a subpart of the independent executive power. Its duties extend over all sectors of state, social and economic life. Such duties include the management of legally

prescribed state activities, the publication of orders, the implementation, steering and supervision of public policies. All of these are done by public officials who benefit from a special legal status. Under the umbrella term of administrative tasks, one includes the preparation and drafting of legal norms, law enforcement, steering and supervision of public policies, as well as offering services to the public. Administrations, on the one hand, have regulatory duties regarding data protection and transparency, and on the other hand, they are bound by these same rules. This makes it clear that administrations, and public authorities, have duties to serve the public.

Defence administration, as part of the overall public administration, are also characterized by the elements listed above. They execute their missions directly under State supervision. Their mandate supersedes those of regular public administrations: they have special powers to ensure their ability to achieve their social goal. In the interest of the rule of law, their activities are coordinated by special laws that supports the optimal social mission. This means that defence administration is accountable to the citizens for their professional activities, and must allow them to exercise supervision. Their work is to maintain order and security for the benefit of society. For individual citizens, this can create a subjective feeling of stability. While defence administrations is part of the general public administration system, their duties are divergent and particular, as the social division of labour entrusts them with the maintenance of a subjective feeling of safety across the population.

Defence administration operates under supervision. They represent a branch of the overall public administration, in charge of enforcing public order, protecting populations and risk prevention. These administrations work in close multilateral cooperation. The general activities of defence administrations (that is to say legislation, law enforcement and the realisation of projects of social interest) coincides with the main characteristics of the overall public administration. The divergences are induced by the special nature of these administrations' duties.

The role and place of police and disaster management institutions has changed in the years following democratic transition. The legislator has modified fundamental rights' contents and proclaimed new tasks in phase with the rule of law's requirements. In order to fulfill their duties in a more efficient way, both institutions have undergone profound changes. For instance, merging the Border Guards with the National Police increased available headcount, and created a new institutional with a bigger organisational background.

Disaster management used to be performed by various independent institutions that are now operating as one united organisation, thereby providing a higher level of efficiency in their security protection duties.

Both organisations remain structured around the principle of regional deconcentration. There are three levels: national, county-level and local. Between them exists a formalised cooperation agreement for the purposes of disaster prevention, damage reparation, and protection of people's lives and properties. These duties remain the same whether in times of peace or under states of emergency.

According to the Law, and especially to the 2011 Privacy Act[5], data protection and freedom of information rules are applicable to the subjects of this study. There are also special directives addressed to both institutions that specify the way in which data protection and freedom of information are to be implemented[6].

From a managerial point of view, data protection was integrated into the organisational chart by the appointment of internal data protection officers. Their efforts can be felt in the conformity to the law of data processing operations. Transparency also applies, and is materialised mainly by formal-informal information exchanges and structural public relations. Transparency is shown in various levels across the country, depending on the local and organisational context.

4. DATA PROTECTION, DATA SECURITY, FREEDOM OF INFORMATION AND TRANSPARENCY IN OUR DAYS

The analysis of the relation between both sides of information rights (data protection and freedom of information) lies at the core of a continuous debate among the theme's specialists. As the debate's main substantial element, we can easily unearth that the actual underlying question is on „which one is the most important". At the same time, this dissertation reflects on how far personal data protection should reach, on whether it is possible to put limits on the right to access information, on what is the aim of openness, and on what the relations are between classification and transparency. Among the dilemmas: how to define personal data, data of public interest, data public on grounds of

public interest and transparency, are ever present questions. Considering this dissertation's topic, I would like to present my opinion on the relational system binding data protection, openness and transparency together.

András Jóri precisely expressed one of data protection's main issues: according to him, data protection and data openness are two sides of the same scientific and practical link[7]. He further develops the fact that both concepts express the interests of citizens, and that in optimal cases, they balance one another. Yet this relation is far from obvious for most public authority agents. In the frame of their official duties, data protection usually serves as a limitating factor for transparency.

This remains true to this day. Incorrect practices still represent an obstacle for transparency.

László Majtényi widely analyses the different data types, their relation to one another, and their use in the field of data protection. One of his important conclusions is that the protection of privacy is what matters for data protection, as it provides citizens with protection in the context of a democratic information society[8]. The aim is to provide comprehensive protection of citizens' data. But the right to protection must not impede, or be an obstacle, to the legitimate interests of transparency.

Both statements bring attention to the fact that data protection cannot be without limits. Its excessive implementation would indeed go against the principle of transparency.

"From the point of view of constitutional law, transparency is inferred by the constitutional principles of democracy and popular sovereignty. Its implementation allows the existence of two other fundamental rights: freedom of opinion and information freedom"[9]. Openness and its corollary, transparency, represent checks and balances in favour of democracy, but also a challenge. The realisation of democracy requires State institutions to perform administrative duties, which leads to the production of data of public interest and data public on grounds of public interest. Their publication and accessibility guarantee the rule of law. Retention of information of public interest imposes restrictions on people's constitutional rights. Therefore, it constitutes an infringement to the Fundamental Law. State administrations, local governments, and safety defence administrations all perform public duties, so information on their basic activities is of public interest and must be made available. In a nutshell, data protection is about the protection of citizens; and freedom of information, being about the State's transparency, includes the right to legally access data of public interest.

Transparency also means, therefore, that each person has the right to be informed about what personal data that he is the subject of are being held by State organs or other institutions. This legal requirement represents a guarantee from the citizen's point of view.

Freedom of information, on the other hand, is set to safeguard public authorities' transparency. From this point of view, transparency requires that controllers of data of public interest and data public on grounds of public interest must open up to wider society. This is the basic requirement for State and public administration accountability. Access to knowledge promotes critical thinking and creativity and the formulation of opinions. Openness and transparency can be observed in the State's supervision. The legality of the State's functioning can be thus controlled through a data protection approach, but transparency allows citizens to access information of public interest without having to prove individual concern. This creates the conditions for general supervision by citizens.

The European Union has been tackling data protection and freedom of information issues with ever increasing intensity. The European Parliament and the Council approved a Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data. This Directive's rules have been transposed into national laws, including Hungarian law, through the mechanism of legal harmonization.

Globalisation's challenges, together with divergences in national legislations, make it necessary to improve harmonization, unify enforcement strategies, and shape common rules on sanctions. Yet the data protection reform package's fate appears uncertain. And there is a complete lack of European Union-level harmonization in the fields of transparency and freedom of information. Applicable Hungarian rules take the European requirements into account. The Privacy Act goes even beyond what was required by European Union provisions, and also constitutes an improvement on its predecessor, the Data Protection Act.

Council of Europe legislation also had an impact on the genesis of both data protection and transparency. As a European Union Member State, Hungary's main source of inspiration for data protection was the Data Protection Directive, but the Council of Europe's conventions played an

important role in the field of freedom of information. These have significantly influenced Member States' legislation and law enforcement practices towards unified interpretations, though full harmonization on data protection has yet to be achieved.

The first Hungarian legislation on data protection and freedom of information preceded EU codification by three years, so later implementation of European norms had to be done through amendments. The constitutional amendment adopted at the time of the democratic transition elevated personal data protection to fundamental right status. The Constitutional Court formed a legal opinion on data protection that is still in force as of today. It proclaimed the existence of informational self-determination, emphasized the importance of purpose limitation, and sketched the shape of widening access to data of public interest.

With the creation of the Data Protection Commissioner's Office, data protection and freedom of information were granted institutional safeguards. At the time, the concentration of both informational rights competences in the hands of one public authority was a unique situation in the world.

The new Privacy Act entered into force at the same time as the Fundamental Law. This Act takes over the relevant provisions from the former Data Protection Act, including those on the access to information of public interest. It creates safeguards against the possibility for privacy protection becoming its own goal and thereby proving a hindrance to transparency's legitimate interests. This Act also created the National Authority for Data Protection and Freedom of Information (NAIH in Hungarian), which took the place of the Data Protection Commissioner as an independent, autonomous administrative authority. The NAIH's attributions significantly exceed the former institution's ones. For instance, it was granted real administrative competences along with the possibility to impose financial penalties. With its extended procedural competences, it can directly influence national data protection practices, which goes hand in hand with freedom of information.

The new system of rules and data protection authority have been declared conform to the European law by control authorities and workgroups. International trends tend towards the combination of data protection with freedom of information, supervised by one single authority. This guarantees an optimal relation between both rights in their implementation in economic, social and State life. Transparency's success is guaranteed by freedom of information and openness. They allow people to gain knowledge on the State and administrative activities. By getting this relevant information, they can take part in the political process.

Over the course of this dissertation, many interviews were made, mostly on the local level of safety defence administrations. They shed light on the fact that transparency's desired success was still short of what is expected to ensure an adequately high level of control by citizens over the State's administrative activities.

THE CORRELATION BETWEEN SECURITY, PUBLIC SECURITY, DATA PROTECTION AND TRANSPARENCY TODAY

Security means lack of threat and fear or rather the ability of protection against these menaces. Its impact comes into effect on different levels, such as individual, collective, national and international level. Different areas of security have an impact on each other, too. Security influences the effectivity of human rights protection and of liberties, including the citizens' right to control the functioning of the state and to the transparency.

9/11led to significant changes in many countries' security policies. This statement also states for the European Union. The changes focus on wider range of information exchange, on free access to information sources by the member states and on finding the dangerous persons. These changes effect liberty rights negatively, however this could be moderated through finding the optimal balance between security-liberty and data protection-transparency.

THE CONDITIONS AND FULFLLMENT OF DATA PROTECTION, PUBLICITY OF DATA AND TRANSPARENCY AT THE ORGANS OF THE DEFENSE ORGANIZATION

During my researches of the relevant topic I have examined the experiences of recent danger – and disaster situations. From the perspective of data protection and freedom of information the thesis asserts and proves that transparency or lack of transparency fundamentally effects the outcome of potential dangers. It positively or negatively influences the life of people and the natural and material environment, too. Without the knowledge of the relevant information the defence forces are not able to perform their basic tasks which is also the guarantee for the transparency of their functioning.

Through examining the transparency of the police and disaster management forces the thesis also asserts and proves that the regulation – from the national to the local levels – comply with the provisions of the Privacy Act (Infotörvény).

Both forces have special features which need special regulation. The different levelled regulations constitute coherent unity. In the case of the police and disaster management data protection and freedom of information (transparency) have an enormous importance. External and internal transparency shall be distincted.

Upon the experiences gathered on different levels my conclusion is that providing information could be organised as a planned activity. The essential content of the information could be defined in advance so transparency as a requirement could be maintained at the end.

In the „time of peace" to serve transparency the internal regulations are to be followed. The organs of the disaster management use different methods using the press and using personal relationships to feed the society's needs for reliable information.

During the interviews made on different levels I was facing several problems which seem to exceed the competency of the relevant head of the police or of the disaster management forces. The remedy to some of these problems might be the modification of the sectoral regulation. But some problems need to be solved through changes of the legal provisions. Upon my opinion summarising of the tension indicating tasks under the competency of the high level decision-makers is more than necessary. The harmonized proposals of the relevant organs of the security management should be brought to the decision makers, to those who are responsible for the drafting of legislation.

CONCLUSION

The analyses of the nature of conflict between data protection and freedom of information is one of the main aim of this present thesis, emphasised in every, and each period of the examination. It has been proved from many aspects that the conflict indicated is of a real nature by the defence forces. Its effect can be followed during the fulfilment of the tasks and by the relationship with the citizens.

The thesis shows the characteristics of the defence management in comparison with other sectors of the public administration. It asserts that the dichotomy formulated in the main objective cannot be interpreted mechanically. The actors of the defence management often tend to favour data protection to the guarantees of transparency. Searching the roots of casualty it seems that the main reason is the special role and activity of the actors within the system of public administration. The tasks are mostly closely related to the persons and are occasionally accompanied with special data processing's.

My experience during the researches was that in the reality it is often hard to define which data is of public interest. The qualification of the documents – following the rules in force concerning the qualified data processing – makes the situation even more difficult. The consequence is that that informing of the public or prevailing transparency fall behind. This rather objective factor – with a legal background with easy reference – can be found at both forces. Moreover, some organs' staff members make a one-sided preference of data protection to the obligation of informing the public. The experiences of the on-the-spot interviews prove that heads of the organs on different levels consciously make efforts to inform the local and national public and also to create and maintain the institutional conditions of transparency.

The legal framework and the determinated requirements and traditions of the senior staff guarantee the reassuring solution of the conflict between data protection and transparency.

The thesis proves (see Framework of the research, Chapter II/3.) the reason to concentrate on the organs of the police and of the disaster management. It also proves that the relationship between public administration and defence administration is not a subordinated one due to the principle of the division of tasks within the society. Each organisation has special powers and neither is replaceable.

The thesis also proves that the organisations fulfill their tasks in compliance with the provisions of the Basic Law as well as of other Acts. Public duties generate data of public interest which are processed by the appropriate administrative staff and assisted by data protection officers. The personal staff is regularly trained and well prepared to process data of public interest.

On the other hand I met with practical difficulties concerning the interpretation of data of public interest.

In the period of research I orientated myself at the central, territorial and local organs of disaster administration. I was confirmed that they are occupied with the interpretation of data protection and

transparency but with different results according to the different levels and different powers. My experience was that the members of the professional staff (including the governmental officials) fully fulfill their obligations as defined in the regulations but providing information in single cases – which should be a vital part of transparency – meets numerous obstacles. These originate mostly in the interpretation problems of data protection-freedom of information and in the exaggeration of decision competencies. The problems are less typical on higher levels, transparency is well founded at national organs.

The thesis proves through concrete examinations that defence administration is based upon public interest thus produces and processes public data. The qualification of the data storage management is regulated, carried out by the administration and assisted by a DPO. Processing of personal-public and data-public-on grounds of public interest are subject of internal regulations at each organs.

The thesis proves my original presumption that the danger of primacy of data protection versus transparency and publicity may appear.

The thesis only partly proves my original presumption that the conflict of data protection-transparency derives from conceptional concerns which really exist but serve only as one reason for the subordination of transparency to data protection interests.

The thesis has confirmed the opinion of László Majtényi stating that efforts made for the sake of protection of data might cause subordinance of publicity of data. The reasons are the following: overregulation, certain circumstances of data qualification at the defence administration and the negative effect of emphasising secrecy's protection. However, the examinations have proved that the constitutional interests have been prevailed in relation to transparency and publicity.

The thesis asserts that the different methods serving this purpose have been developed on different levels of defence administration and function well in the daily practice. Some of these derive from formal, legally fixed obligations, some of these are built on local relations and traditions.

Summary: based upon the pre-examinations and on the explored facts the thesis asserts that the conflict of transparency-data protection at the defence administration is real. The conflict's effect differs vertically and also appears in different dimensions in relation to the police and to the disaster management.

The factors working against transparency and publicity refer to real problems but there is a conscious effort to comply with the requirements of transparency.

These features jointly prove that the concrete results of my research work reflects the real situation. The examined organs' leadership and members, the information found in documents, the content of the legal regulations and the interviews unambiguously prove the prevailing of transparency.

1. The research concentrates on the topic of transparency as well as on the correlation between data protection and freedom of information in relation to the organisation of the disaster management and of the police within the defence administration system. The relevant scientific literature convinced me that although the new Privacy Act has been already analysed from several aspects in the form of scientific studies, essays etc. my thesis offers a new perspective of the given correlation.

Speaking of the system of defence administration my analyses is the first in the line which focuses on the points of conflict in relation to institutional conditions of data protection-transparency. The thesis discovers the positive and negative procedures generally. One of the most important problem is the interpretation of personal data-data of public interest- data made public on grounds of public interest. A harmonised legal practice and the elimination or minimisation of the subjective element would be essential in order to guarantee the citizens' rights of free opinion and of public control.

2. In the early stage of the research my perspective focused on external views – societal groups, local communities, single citizens. Later – in particular as a result of the analyses and consultations on disaster or near-disaster situations – I was confirmed that transparency within the defence administration is as important as transparency requirements directed towards the defence administration. The distinction of an „external" and „internal" transparency for data protection and transparency experts is still an open question.

3. Data of public interest processed during defence administration activities shall be made public according to the law. Administrative qualification of these data is strictly regulated. Although the

publicity of these data is an interest of the society, it could be in conflict with individual interests. The solution of this conflict might be problematic in the practice. The single discretion power shall be limited and it is highly recommended to set up a unified legal practice with the cooperation of the National Authority for Data Protection and Freedom of Information.

4. The research work used modern scientific methodologies but the examination of the correlations needed complex methods. It means that the analyses of the institutional and activity problems had to draw on theoretical and practical comparisons. Thus the thesis can prove that data protection, data security on the one side and freedom of information, transparency on the other side often have a counter effect on each other. Maximisation of security negatively effects transparency, as well.

5. The system of regulation in relation to defence administration, data protection and freedom of information is partly independent, partly corresponding. It comprises a whole spectrum from the Basic Law to Acts, governmental and ministerial decrees to strategical and specific „internal" rules. Examining some of these rules I concluded that we cannot speak about a coherent system as it can be described as fragmented, professions- and sectoral- or national competency based.

The complex defence administration, data protection and transparency function as legally based systems. The differences do not have an essential effect on the functioning. However, the deficiencies in relation to the regulation shall be solved through the legal interpretation or through the modification of the legal provisions.

6. The examination of the chosen topic led me to the recognition that the terminology of data protection, data security, publicity and transparency has become too difficult, too sophisticated.

The publications and statements are clear for the experts but remain unclear for those who are expected to fulfill the requirements. Although the basic principle is easy to understand: personal and qualified data shall be protected, data of public interest shall be disseminated. It is most recommended to interpret data protection and freedom of information issues in the most simple and clear way.

7. The research confirmed me that the institutional system is operable so it is not necessary to carry out a complete supervision or to set up a new system. The effectivity of the present system could be optimised by introducing a unified legal interpretation and by the minimisation of the role of the subjective elements.

8. The publicity of the public information and transparency are serving the interests of the society. The problem is that the responsible decision makers processing public information often find themselves under the pressure of necessity – just as explained in the thesis. The solution of this conflict falls out of the competency of the defence forces. It is highly advisable to pass in a proposal of modification of the relevant Act to the Parliament with reference to the annual report of the Hungarian DPA.

9. To increase the transparency of the defence forces it is important to use the direct possibility of consultation with the experts of the Hungarian DPA during the investigation or at the DPO's annual conference.

Proposals for the use of the new scientific results

The content of the thesis could be used:

– by the experts of the police and the disaster management forces. It could be interpreted as an analysis of the present situation;

– in the NAIH's procedures as a complex evaluation of the methods of the investigation;

– by publications, studies;

– in the curriculum of the National University of Public Service (in particular the analysed examples and consequences of the thesis).

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Artem Lazorskiy, *Student of the Taras Shevchenko National University of Kyiv*

CIVIL SOCIETY AND THE STATE: INTERRELATION AND INTERACTION

The process of formation of Ukraine as a modern, democratic and legal state combines fundamental changes in the Ukrainian society life, starting with the process of rethinking fundamental values and priorities of social transformations that underlie it's a separate and independent state development, seeking to occupy a worthy place in the world, and ending with regulation of the activities of government institutions and civil society institutions.

The purpose of this article is to study various aspects of interaction between law, government and civil society because civil society is a informal mechanism of social partnership, which provides for the maintenance of interests in society and their implementation existing balance.

Problems of formation and functioning of legal state and civil society is recognized in modern conditions of fundamental importance. The emergence and further development of legal state occurs in the development of civil society. The relationship of the legal state and civil society is a determining factor for the state and society successful development an indispensable condition for ensuring fundamental rights and freedoms of man and citizen.

In Ukraine there is no clear mechanism of constitutional-legal regulation of activities of non-state actors of civil society, and their interaction with the state authorities, namely: legally defined clear and consistent characteristics of the subject composition and civil society institutions; effective system of constitutional regulation and legal relations in civil society institutions and the state apparatus; a stable and clear legal instruments and procedures for the interaction of civil society and the state, which provide the balance of their interests.

For Ukraine, the construction and further development of civil society, which confirms and determines the depth and pace of the domestic social existence democratization process, remains today the primary problem that requires immediate attention.

Thus, the interaction of the state with civil society should be aimed at strengthening the process of democratization authorities, the development and strengthening of civil society institutions, strengthen their communication and is an expression of the desire of the authorities and civil society to collaborate with the aim of further improvement and development of partnerships.

No significant changes in the political system it is difficult to expect on the effectiveness of the interaction, the confidence of civil society, the state and citizens. Therefore, priorities need to consider the improvement and consolidation of system participation practice of civil society in the public policy formation, as well as decentralization and delegation of some powers of Executive bodies to the civil society with the introduction of monitoring appropriate system the implementation of such powers.

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Olha Khorokhonko, *student of the Institute of International Relations Taras Shevchenko National University of Kyiv*

RENVOI AS THE RESULT OF NEGATIVE "CONFLICT OF COLLISIONS" IN INTERNATIONAL PRIVATE LAW

In this article was discussed the problem of renvoi as the result of negative "conflict of collisions" in international private law. In Conflict of Laws renvoi is a subset of the choice of law rules and it may be applied whenever a forum court is directed to consider the law of another state.

There are different types of renvoi: single renvoi; double or multiple renvoi.

From the actions mentioned above, can be concluded the fact that the institution of renvoi has an importance both from theoretic point of view, and from practical point of view.

The renvoi intervenes when the conflict norm of the approached court sends to a foreing law system, and this, by its own conflict norm, does not receive the competence which is attributed to it and either sends back to the law forum, or sends father to the law of a third party state.

We can state that if the renvoi would not be admitted, it means that fhe foreing law will be enforced in an area where it declares itself incompetent.

Futhermore, there are cases when the renvoi can not function, when the court of law does not refer entire law system but only to some accurate material regulations. At the same time, the renvoi is not accepted in all law systems and when it is accepted there are cases when it can not function.

The results of research are directed to analyze the problems of renvoi into different legal systems and to find ways to solve it in Ukraine.

The conclusions highlight the fact that renvoi can be used in the conflict relations complicated by a foreign element, but limited to the area of personal legal status of individuals. To take into consideration that private relations are characterized by optional referrals regulation assumed adopting renvoi in other cases.

Also proposed the adoption of renvoi in matters of form, content and other important terms of the transaction in Ukraine, edit Article 9 Law "On International Private Law", that arrange the problem of renvoi in our country.

Demands for the article arrangement

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The file with the scientific article shall contain:

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