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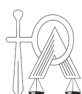

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The present collection of scientific papers considers problems of modern jurisprudence in the context of sustainable development of state institutions and certain areas of law. Most published researches are carried out by scholars of National University "Odessa Law Academy" within such fundamental and applied topics as "Development and improvement of existing legislation to strengthen human rights protection potential of courts, prosecutors and other law enforcement agencies", "Organizational and legal framework for state support of marine economy of Ukraine",

"Methodological basis for improvement of the civil legislation of Ukraine", "Complex research of evidence-based activity of the court (judge) in criminal procedure of Ukraine", "Innovational and organizational legal mechanism of creation and operation of communal shipping companies in Ukraine".

The collection is intended for scholars, lawyers, postgraduate students and students who are engaged in this issue.

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Chapter 1

GENERAL AND THEORETICAL AND CONSTITUTIONAL AND LEGAL RESEARCH

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ON THE DETERMINATION OF THE PRINCIPLES OF PRE-TRIAL SETTLEMENT OF PUBLIC LAW DISPUTES

Modern democratization of relations between the authorities and society reoriented traditional tasks most state and municipal institutions, ensuring the empowerment of individuals, but also became the leader of the foundation for the emergence of a significant number of disputes for which the administrative proceeding was the most common and acceptable way to solve. Confidence in the administrative courts in society is one of the highest, which certainly proves their efficiency and factor that provides a constant increase in the number of applications for the protection of rights. This trend leads to the formation of systemic problems administrative branch, gaps and inconsistencies in the legal regulation of the competence of government, local government, separation of powers between different authorities. In addition, the growth burden of administrative courts affect expansion of cases within their jurisdiction, the introduction of new types of proceedings. Today the administrative courts considering the huge number of applications in a short procedural terms, that can not affect the quality of the trial, and therefore judicial decisions. So in terms of radical changes in the state effective and rapid problem solving conflicts extremely acute system to ensure the administration of justice.

Along with the simplification of judicial procedures one of the promising areas of improvement of public consideration and resolution of disputes is the introduction of alternative (non-judicial, pretrial, quasi-judicial) settlement and ways to resolve conflicts between participants in public relations. Mediation as a way to resolve the dispute with the assistance of an independent third person – the mediator – has gained widespread in the private-sector, but given the positive international experience and objective necessity in terms of critical workload of administrative courts, are increasingly heard proposals to develop a similar mechanism adapted for public and legal spheres.

A conciliation procedure is quite diverse and can carry both in litigation and beyond, as the mandatory basis, and with the voluntary will of the parties to the dispute. All of them with varying degrees of effectiveness provide reducing the burden on judges and can not always be used in a public-legal sphere.

V. Zavalniuk

LEGAL CULTURE AND LEGAL SYSTEM OF UKRAINE: ANTHROPOLOGICAL ASPECTS

Legal culture has a powerful anthropological basis, since it is based on respect of a particular person (or group of people, or communities) to the law, the legal system, and this attitude is based on the beliefs, values and ideals. Legal anthropology can reveal the dynamics of the legal culture by defining its center and periphery, driving forces, structural dynamics and dead-end areas of the legal culture.

The formation of Ukraine as a legal, democratic, social state requires effective means to restructure of legal education, the legal organization of universal education as a national task, which will cover all segments of the population. Therefore, the formation of the democratic foundations of Ukrainian society at the present stage is directly related to the development process, the dynamics of legal culture, use of modern European norms and standards.

Thus, we investigated the place of anthropology of law in the formation of legal culture and legal system of Ukraine. We found that the current stage of development of legal culture of the Ukrainian society is characterized by the value reorientation of the relationship of the state and human rights. The source is a person, and the state has to protect his rights. As one of the major trends in Ukraine can be considered a gradual and sequential approach of natural law and state law began in the legal system, which occurs simultaneously with the growth of human culture, the realization of the moral and social ideals of humanistic anthropocentric.

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GLOBALIZATION AS A CRITERION OF CLASSIFICATION OF NATIONAL LEGAL SYSTEMS

Globalization is one of the determining factors of the external transformation of national legal systems and one of the criteria for the classification of national legal systems. Globalization of the legal system is a set of qualitative and quantitative elements, which are found at the level of its subsystems and components. Based on complex criteria of globalization author distinguishes the following types of legal systems: 1) globalized; 2) fragmentarily globalized; 3) glocalized; 4) localized.

Globalized legal system is a national legal system which operates and develops on the basis of a significant consideration in national law and international law, the active interaction of the national legal system of international bodies and organizations, and carries out a policy of legal integration, internationalization, adaptation, harmonization, implementation, standardization of norms.

Fragmentarily globalized legal system is a national legal system which operates and develops the individual components given legal globalization, a number of its elements and subsystems remain unchanged; this is transitional state, because there is uncertainty or inconsistency of further development, which can consequently become transition to another legal system.

Glocalized legal system is a legal system that operates and develops on the basis of a specific combination of global and local economic, legal, political, cultural and moral factors which is reflected in all sub-systems and elements of the legal system, system of rights and laws.

Localized legal system is a legal system that operates and develops in opposite direction of globalization, maintaining traditional elements and relations of the legal system.

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CONSTITUTIONALIZATION OF THE LEGAL SYSTEM IN THE CONTEXT OF ACTIVITY OF THE CONSTITUTIONAL COURT OF UKRAINE

This article is devoted to the author's vision of problem of constitutionalization of the legal system in the context of the Constitutional Court of Ukraine. The important role of the Constitution in the construction of the legal system is determined. It is accented that constitutionalization is not only a radical transformation of the current legislation. By its nature and scale it is intended to ensure the progress of the entire legal system.

Every article, every provision of the Constitution should be implemented in practice of everyday operations of all state agencies, all public officials, all citizens of Ukraine. With this in mind, constitutionalization is a public and legal phenomenon that arises purely from the will of public authorities. Participants in this process are all subjects of law-making, law-enforcement and law-implementation process. Exactly these agencies has the responsibility for the development and adoption of the Constitution of Ukraine, constitutional laws and other legal acts and legal sources, they take steps on implementation, interpretation, protection and enforcement of existing legislation. No one of them should be preferable, whereas it is expedient to emphasize the fundamental role of the Constitutional Court of Ukraine, which owns the right to the last word in this process, because the process of constitutionalization may take the form of acceptance, changes and amendments to existing laws, adoption and implementation of decisions of the Constitutional Court of Ukraine.

The Constitutional Court of Ukraine plays a key role in ensuring compliance of the national legislation with the Constitution of Ukraine. It has spoken in defense of the constitutional order of Ukraine as well as the fundamental rights and freedoms enshrined in the Constitution, thereby ensuring its supremacy. Actually the development of elements of the legal system must meet the system of constitutional values and the constitutional logic of regulation. As result of the practice of the Constitutional Court of Ukraine, the Constitution of Ukraine is constantly developing in the interpretation.

It is noted that constitutionalization is a dual process aimed, on the one hand, at consistent and most complete expression of the normative content of the constitutional provisions in the current legislation and law enforcement practice. On the other hand, constitutionalization is realized by rooting in the public practice of constitutional actual behavior, the natural development of which is intended as formal legal constitutional recognition of actually existing constitutional relations that can be achieved by amending the Constitution, and partially by the Constitutional Court of Ukraine.

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WAYS OF IMPROVING THE NATIONAL AND INTERNATIONAL LAWMAKING PROCESS: THEORETICAL AND PRACTICAL NECESSITY OF MODERNITY

The article refers to the relevance of the chosen topic of the research dedicated to the factors that have a significant impact on the development of national and international law standards. The author notes certain factors occurring in the field, thus contributing to a significant intensification of the process of forming national and international law-making procces. In particular, attention is focused on the significant development of all sectors of society, increasing the level of international cooperation, the emergence of new areas of society that are the basis for the implementation of new processes of state building and law-making and the need to develop new ways to improve implementation of the law-making at the national and international levels. In particular, national and international law-making procces activity ensures the formation of qualitatively improved and effective national legislation and international legal documents. Therefore, at the present stage of legal science and practical development, the issues connected with research of factors influencing the content and process of forming national and international law-making procces, as well as ways to improve it are important.

Given this, the attention should be paid to the investigation of the factors that significantly contribute to boosting and positive dynamics of the implementation of national and international law-making procces. The author has drawn attention to the description of the contents of the mentioned conditions.

Furthermore, various existing scientific works in legal literature in which scholars characterize mentioned condition are also analyzed. On the basis of scientific material, the author draws attention to the differentiation and analysis of ways to improve the content of national and international law-making procces. These include: improving the legal regulation of national and international law-making procces, improving staffing of national and international law-making procces, improving the organizational support of national and international law-making procces, improving the forecasting and planning of national and international law-making procces, improving the mechanism for compliance of national law with international norms and standards.

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ROLE OF LAW-MAKING IN CONSTITUTIONAL LAW OF THE STATE

To research of the role, importance and characteristics of law-making in the constitutional law of the state is considered in the article.

The article states that one of the major tenets of modern civilization suggests that the state exists for an individual to protect his freedom and to promote well-being. But how to balance freedom and power? After all, if freedom exists out of the solid statehood, it can easily degenerate into anarchy and permissiveness, and if statehood is based on the denial of freedom, a person is caught in a trap of totalitarian oppression. Finding the balance of power and freedom is the most important and delicate sense of constitutional law. Lawmaking (legislative) activities in constitutional law must meet the same guidelines.

The author notes that features of lawmaking (legislative) activities in constitutional law are primarily determined by the peculiarities of the subject and method of regulation, and the features of source structure of constitutional law that acts as profiling and basic industry of the national law of the state. These features not only actualize lawmaking (legislative) activities in constitutional law, but also impose its corresponding requirements for quality, consistency, integrity, continuity of such activities, general and special high professionalism of its subjects.

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THE CONCEPT OF THE RIGHT IMPLEMENTATION FROM THE POSITION OF DIALECTICAL POLARITY OF THE NATURAL AND POSITIVE LAW

The problem of correlation between natural and positive law – the right and the law, is one of the methodological problems of national philosophy of law. It represents a substantive understanding of law (from the idea and concept of law as an objective function of social regulation to the understanding of law as a legal creation of the state), which can be adequately understood and meaningfully deployed in a consistent system of philosophical doctrine.

From the legalistic point of view, the right implementation is treated as the implementation of the law, i.e. rules of law, because right and law in this type of understanding are considered identical. From this way of thinking, the realization of the right covers all methods and forms of external law objectification, its transfer to the level of reality, the emergence of law as a positive entity.

In contrast to the positive right, natural one is a theoretical doctrine, according to which the main source of law is nature, but not the will of the legislator. The idea of natural rights is manifested in recognition that together with the law of the state created by people, there is natural law, which is deeper, more thorough, fundamental phenomenon in people's lives and the source of it is natural order of things in society and nature.

In the article the author carried out theoretical research of the concept of "right implementation" from the standpoint of dialectical polarity between natural and positive law. The analysis of the legal literature on research of the relationship between natural and positive law was carried out. The analysis of the legal literature was done from the standpoint of the study of the relationship between natural and positive law, the right and the law. The opinion about the need to overcome the dualism of natural and positive approaches to understanding the nature of the right was determined.

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CONCEPTS OF RIGHTS PROTECTION AND DEFENCE AND THEIR CORRELATION

The article is based on the synthesis of previous research and deals with the concepts of such definition as “right protection” and “right defence”, analyzing them through economic relations on public property. Special attention is paid to practical issues. The author works in the branch that he explores. The article is based on the analysis of legislation and judicial practice.

Under such conditions a transfer from the reproduction of municipal services on a simple scale to their adaptation regarding the potential requirements of the population is necessary. According to the new tasks, the local bodies’ property potential should be fully transformed. The suggested approaches to elaborating and realizing the strategy of the municipal property management allows allocating municipal assets following the new priorities while maximizing the general efficiency of their protection and defence.

Article provides conclusion that not only local authorities but also communal enterprises and agencies can be engaged in protection of the right of communal property.

The above-stated problems and offered ways of their solution must be taken into account by the civil officers of executive bodies of local government in Ukraine and have to be used in process of improvement of national legislation. This article is also intended to advise practitioners on the steps needed to overcome existing problems. It defines the causes of the problems these institutions face and intends to propose solutions. The intention is also to prepare supporting resource documents, which regulate the law system in branch of communal property.

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TRUTH AS A PROBLEM OF STRUCTURING OF POST-METAPHYSIC SPACE OF JURISPRUDENCE

The searching of legal truth has key importance for formation of legal thinking as an independent philosophical discourse – sphere of law-as-philosophy. There are no conceptions of truth satisfy demands of post-metaphysical epoch within jurisprudence. All of the reflections of legal truth are requiring correlation of intellect to things in existence. They are different in interpretation of such things only. Such things might be legal construction, or normative formulation, or neutral functionalistic descriptions, or fundamentally legal notions a priory. Each of these interpretations of truth is metaphysical because legal things in existence are postulated as object independent from thinking.

Non-corresponding conception of legal truth is inevitably post-metaphysical. Such conception represents truth as legal comparison. Legal comparison is mode of integration of notion of truth as ***άλετεια*** to legal thinking. The space between national legal orders is the sphere of legal being. The legal truth is not reproduction of existing sense but the process of creating of such senses. The address to foreign law is the mode of transformations of its own legal senses. Possibility of such address is the legal truth. Legal truth is mode of structuring of intellectual space of jurisprudence. One is divided on two spheres. The first sphere is sphere of reproductions of existing legal senses, i.e. legal dogmatic. The second sphere is the law-as-philosophy, i.e. legal comparison as a truth procedure. Legal truth as a procedure fixates being of law as being not as thing.

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USE OF FOREIGN EXPERIENCE IN PROTECTION AND DEFENCE OF CITIZEN'S ELECTORAL RIGHTS

The analysis of foreign experience in the protection and the defence of electoral rights of citizens in countries such as the USA, Canada and Western European States is carried out. Author gives the concept of protection and defence of the electoral rights of citizens and clarifies the meaning of the use of these terms in public law. The article differentiates the concepts of "electoral offences" and "electoral crime". The article determines the problems of using foreign experience in protection and defence of electoral rights of citizens on the issues of constitutional legal regulation and protection of the electoral rights of citizens. The author attempts to analyze various forms and methods of protection of citizens' electoral rights. The author proves the position, according to which our country should guarantee priority of the protection of the electoral rights of citizens, and also determines that the election results materialize the will of the citizens and that they are the end product of realizing citizens' electoral rights. The article focuses on the fact that if such guarantees are not stated in the law and courts and electoral commissions do not comply with them, there inevitably appear mechanisms that allow manipulating the election results contrary to the will of the electorate. The mentioned legal violations during the election campaign include the violation of the procedure of formation and activity of electoral commissions. It is noted that the degree of social danger of the existing legal violations is quite high; as a consequence of their implementation there is a possibility of recognizing the elections as invalid, which could become a reality. The article discusses the offences against the order of registration of voters. Author formulates suggestions concerning the use of foreign experience in protection and defence of the electoral rights of citizens and the directions of its constitutional and legal support. The author notes that the core components of the officials' violations during election campaigns are the abuse of official position and illegal use of state property for the campaign. On the basis of the conducted research the ways of perfection of the legislation on regulation of the electoral process are provided.

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UKRAINIAN NOTARIES AND NOTARIAL LAW DURING THE NATIONAL STATE FORMATION PROCESSES IN UKRAINE IN 1917-1920 YEARS

The research is devoted to the issue of legal regulation of notarial activities in Ukraine.

This paper analyzes the laws regulating the activities of notaries of Ukraine during the period of Ukrainian statehood revival of 1917-1920.

October events in Petrograd and the proclamation of Ukrainian People's Republic in Kiev radically changed the fate of Ukrainian statehood. On the territory of Ukraine remained the same post-reform courts, the same organization of the notary activity. According to the Law "On Legal Succession" of November 25, 1917, prior Russian law remained in force.

The Ukrainian state sources of law were customs legislation of the Central Council of Hetman Pavlo Skoropadskiy and acts of imperial Russia, which did not conflict with the new law.

Ukrainian notaries continued to be regulated mainly by "Regulation on Notaries" of 1866, which governed the activities of notaries up to 1918.

Decree of the People's Secretariat of Ukraine on January 4, 1918 "On Introduction of the National Court" indicated liquidation, along with others, of the Institute of Notaries.

Institute of Notaries in Ukrainian People's Republic, Ukrainian hetman state and Directory ruled by Skoropadskiy did not differ from the pre-revolutionary one. Partially changed only the rules on the appointment of notary's office.

Decree of the Council of People's Commissars of Ukraine of February 25, 1919 "On Establishment of the People's Notaries Chambers" was founded by the Institute of National Notary, lasted until April 16, 1921. The above decree abolished all previously Soviet Socialist Republic notaries operating within the territory of the Ukrainian.

The article deals with the requirements for people who wish to become notaries and national order of their election. In practice notaries chambers certified: fidelity of copies of documents; authenticity of the signatures on the instruments of power of attorney, declarations, obligations, requests; establishment of the facts of legal significance; transfer of applications from one person to another.

The author concluded that the notaries of Ukraine after 1917 fundamentally changed its legal status. The elimination of private ownership of land and real estate led to a leveling of the role and importance of the institute of notaries. Introduction of notary chambers should be considered a positive development, which started the development of Ukrainian notarial law.

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ECONOMIC RIGHTS AS A MANIFESTATION OF THE INTERACTION OF LAW AND ECONOMICS

The article deals with the content, structure and place of economic rights within legal status. It is noted that the traditional consideration of economic rights as those that form social and economic background, is counterproductive in terms of modern ideas about the interaction of law and economics. It is shown that property right is a source of economic rights, which determines the existence of an equal potential for economic actors.

The analysis of contemporary legal literature shows the specifics of correlation between law and economy as two separate spheres of human life. It also gives a possibility to emphasize the main features of economic rights, such as:

– firstly, economical rights are the specific forms of possible behavior in economic sphere;

– secondly, these possibilities define kind and measure of behavior in economic sphere;

– thirdly, these possibilities are defined and guaranteed by the state through its participation in international conventions and within the implementation of its norms according to national legislation.

Economic rights of human are based on the private property right. Those are: right to freedom from economic exploitation; right of business etc. Traditionally right of business is considered as a first generation right, meanwhile the right to freedom from economic exploitation is the third generation right. It proves that economic human rights exist not only in the context of generation of human rights, but they are also the structural element of human's legal status, which evolves.

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JURIDICAL AND TECHNICAL INSTRUMENTS OF STATUTORY INTERPRETATION ACTS' CONSTRUCTION

The issue of juridical and technical set of tools is one of the most important in the system of research of juridical technique of legal acts. However, it should be admitted that this question is not enough highlighted in the law theory which negatively influences quality of statutory interpretation acts. Despite the high scientific relevance of juridical technique theme, the analysis of juridical literature motivates to speak about the doctrinal uncertainty of number of issues which, according to their content, form the basis of further understanding of juridical and technical tools. The absence of definite understanding of the above stated meanings and criteria for their diversification complicates further work with practical implementation of these means, ways, rules and methods during preparation and approving of statutory interpretation acts. In this article different scientific approaches to this definition are analyzed and the author suggests her own view of this certain definition.

The content of juridical technique of statutory interpretation acts is revealed through juridical and technical set of tools that is represented by rules, means and ways. The means of juridical technique of legal interpretation acts are represented by the tools of act interpretation with the help of which the competent judicial authority forms its legal point of view reflecting it in statutory interpretation acts' text. The means of juridical technique of statutory interpretation acts consist of general and special juridical ones.

The rules of juridical technique of statutory interpretation acts are the basic requirements concerning the usage of means of text statement as internal and external acts' interpretation. To the stated above belong: language rules (clearness and simplicity of statement, understandability, literacy, unambiguity and conciseness), stylistic rules (forming the text in style of official documents), logical rules (coordination of text parts, consistency of presentation, validity), structural rules and formally attributive (requisite) rules. In this context we should admit that the last two rules, i.e. structural and requisite, will differ depending on the specific interpretation act and competent judicial authority, which issues such act.

The last part of juridical and technical set of tools is means of juridical technique of statutory interpretation act. It includes: legal reason, procedure of act consideration and adoption, terms and order of promulgation.

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RIGHT AND LAW IN SCIENTIFIC WORK OF H. BAUMEISTER "ELEMENTA PHILOSOPHIAE", TRANSLATED BY P. LODIY

The paper is devoted to the problem of the nature of right and law, types of laws in scientific work of H. Baumeister "Elementa Philosophiae", translated by P. Lodiy. The issue in this sphere is new enough because we do not have any considerations of this problem. Furthermore, the theme is very relevant because it elucidates the problem of right and law which are necessary for normal livelihoods of state and society. This scientific work is philosophical but our subjects of study are problems of right and law covered from a philosophical point of view.

The author considers the concept of natural law, types of laws, including the focus given to the natural law. These issues are inextricably linked to human rights, freedom, duty and happiness. The aim of the right and the law is an indication of a person and the way he should act in order to achieve happiness and prosperity. This law may show that there is good, which should be followed, and what is bad, which should be refused. The man freely, as being endowed with free will, has the ability to choose option of his behavior in accordance with requirements of the law. In addition, to be effective, every law has a duty to implement it. It must be communicated to people.

Laws are divided into divine, natural, positive and humane. Divine law is the law of nature; it is given to people by the Creator and recognized by the mind. It was established in accordance with the forces and capabilities possessed by people. Also divine (natural) law corresponds to the nature in general and human nature in particular. If a person obliges another one to do certain acts freely, then the law is humane. The natural law is eternal, absolute, universal.

Therefore H. Baumeister and P. Lodiy determined original concept of right and law. The author emphasizes how important it is to continue the research in this area.

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FRENCH CUSTOMARY LAW: SOME HISTORIC AND LEGAL ASPECTS

The article is devoted to some historic and legal aspects of French customary law. In the society of Medieval France legal customs were called "coutume" that is, established rules of general conduct. At the initial stages, the French state coutume primarily had regional character and spread on certain limited territory. Despite their inconsistency, they became the main source of the French law in XV century. Later the state bodies came to the conclusion about the necessity of written fixation of legal customs, which resulted in the beginning of forming coutume collections of provinces, towns and even villages. After the revolutionary events of 1789, French customary law changed under the influence of new social conditions since its rules lost their relevance providing the stability of the feudal society. At the same time new legal customs were formed which were necessary for the legal regulation of capitalist relations.

Some legal customs of France, which were in force at certain stages of its history, have been analyzed. The regency consisted in the fact that if the king of France died, and his heir was underage, the regent (his mother or another closest relative) functioned as the head of the state on behalf of him. The homage was the oath of allegiance of one lord to another; the result of it was that one seigneur became a vassal (dependant) of another seigneur; he got fief for it – an allotment with feudal-dependent peasants, a right to collect taxes and a right to trial. The legal custom of rent consisted in periodic payments of one person (rental debtor) to another person (rental creditor) during the term determined by the rental contract (a kind of the contract of interest loan). Majorat as a customary and legal principle of inheritance law consisted in giving preference to an elder brother in inheritance procedure. Formariage consisted in the fact that a peasant, who intended to marry and become a son-in-law in the lordship of another feudal, had to get a consent from his lord and pay appropriate property compensation. When a girl married in another's lord village, her father had to pay the seignior appropriate compensation called "coupage." A duel as a legal custom was an armed fight between two persons on pre-defined conditions aimed at defending offended noble's honor or resolving litigation.

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HUMAN VALUES AS A PREREQUISITE FOR THE UNITY OF WESTERN LAW

The article describes the most fundamental positions unity Romano-Germanic and Anglo-American family law. Scientifically substantiated the principle of convergence of different legal systems in nature because of the priority of the common values that serve justice, freedom and human rights in the country.

Differences between the Roman-Germanic and Anglo-American legal families, such as prejudicial thinking, traditionally dual structure of law, lack of separation of private and public law, a priority of procedural rights before the substantive law, judicial procedures (technique differences and appliances off) , communication of legal norms of casuistry, devoid of significance. The unity of both legal families due to common values of Western civilization, especially freedom, property and justice. It is these values have priority to build Ukraine as a democratic, legal state, which causes particular relevance of their study in different jurisdictions law.

Thus, Romano-Germanic and Anglo-American family law formed on the ground of Hellenistic legal culture, so reflect all the characteristics of this culture. The unity of families due to the above common values of Western civilization, primarily ideological.

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THE RIGHT TO STRIKE IN THE FOUNDING TREATIES OF THE EUROPEAN UNION

The article deals with the question of the right to strike in the founding documents of the EU – the Treaty on European Union and the Treaty on the Functioning of the European Union and the Treaties, which supplement and modify them.

As you know, giving constitutional status of the right to strike is evidence of its recognition at the state level and higher degree of protection. In the European Union the status of the right to strike can only get through legal reinforcement in the founding Treaties of the EU, which serve as the constitution of the Union. Ultimately, it determines the legal regulation and judicial protection of the right to strike both at EU and at national level.

In the founding treaties of the European Union, there is no legally enforceable right to strike. However, they refer to the four documents in the field of human rights, three of which – European Social Charter (1961), the Community Charter of the Fundamental Social Rights of Workers (1989), the EU Charter of Fundamental Rights (2000) – directly refer to the right to strike. However, only one of these documents – the Charter of 2000 – has the same legally binding force, as the founding Treaties of the European Union.

However, the founding Treaties of the EU indicate unfavorable treatment of the right to strike by the European Union as a right that provides for the development employees' and trade unions' initiative to protect their interests and rights. This is revealed in the position of Treaty on the Functioning of the EU, that the right to strike is exempt from the activities of the European Union on support and complement of Member States, which EU may give by issuing guidelines on minimum requirements for the realization of rights in the field of representation and collective defense of interests of workers.

Chapter 2

CURRENT PROBLEMS OF CIVIL AND ECONOMIC LAW OF UKRAINE

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FORCED DIVISION IN THE PROTECTIVE AND LEGAL MECHANISM OF RELATIONS' REGULATION IN THE FIELD OF COMPETITION

Taking into account internal organization of law-enforcement mechanism of the legal regulation in the field of competition, legal nature of a force division is investigated for monopolistic (dominant) abuse position. Investigating legal nature of a force division, author draws conclusion about a necessity of its consideration as a measure of defence, but not measure of responsibility. Exceptional nature of application of a force division is argued taking into account only its efficiency and expediency.

Unlike penalty imposition, carrying out punitive functions in relation to the subjects of economic activity, that abuse the monopolistic (dominant) position at the market, application of measure of protection such as force division gives an opportunity to fully remove reasons of the indicated offence. It is determined that by means of application of a force division, the measures of defence of totality of interests will be realized in the field of competition: public interest; interests of direct participants of process of market competition.

Possibility of application of a force division as for monopolistic (dominant) abuse position complies with the action of presumption of law of effective (legitimate) competition maintenance that is set forth in a preamble to Law of Ukraine "On Protection of Economic Competition". It means that the norms of competition legislation are first of all applied for providing the effective functioning of economy of Ukraine on the basis of development of competition relations.

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REASONS FOR TRADEMARK RIGHTS ACQUISITION

The article investigates the basis of the acquisition of rights to trademarks. Grounds of trademark rights are divided into primary and derivative. Features of national and international trademark registration are highlighted in the article.

The system of international registration of trademarks is governed by two treaties: the Madrid Agreement Concerning the International Registration of Marks.

In particular, article reveals the legal protection of well-known trademark. Protection for well-known trademarks is not confined to the use of similar marks used for goods or services identical or similar to those of the owner of the well-known trademarks, but also to the use in relation to goods or services which are not identical or similar to those of the owner of the well-known mark if such use would indicate a connection, which exists between such goods or services and the owner of the well-known trademark. The protection of famous and well-known marks according to the Paris Convention for the Protection of Industrial Property is provided in Article 25.

The article describes the agreements on disposal of property rights to trademarks. The author analyzes agreement on transfer of rights and license agreement granting the right to use the trademark. It is indicated that the scope of rights of the licensee depends on the type of license. Author reveals three types of licenses: simple, exclusive and non-exclusive.

The author examines the conditions of use of trade mark on the right of first use. The implications of the termination of the trademark certificate are considered.

The author stated the need to settle the conditions of use of trademark after the cessation of validity of the certificate until the end of three years prescribed by law.

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NETTING IN PRIVATE LAW: LEGAL NATURE AND PROBLEM ASPECTS OF APPLICATION

This article deals with the issues of legal nature of netting widely used in international financial markets as the way of termination of financial contracts. The author provides comparative analysis of netting with in contrast to similar legal technique of termination of financial contracts. Classification of types of netting used in international financial transactions is presented in the article. In particular, the author presents the main characteristic features of settlement netting and close-out netting, as well as netting by novation.

Main problems arising in respect of close-out netting such as conflicting with a range of mandatory provisions of bankruptcy legislation are also determined and considered within this paper. The author emphasizes that the notion of close-out netting is a relatively new addition to the legal terminology and it is not particularly well-defined. Close-out netting is often understood as resembling the classical concept of set-off applied upon default or insolvency of one of the parties. The article provides a brief outline of the UNIDROIT Principles 2013 on the Operation of Close-Out Netting Provisions, their key provisions applicable to close-out netting and their impact on solution of current problems existing in national legislations in respect of application of close-out netting. The aim of these Principles is to provide detailed guidance to national legislators of implementing States seeking to revise or introduce national legislation relevant to the functioning of close-out netting.

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CIVIL LIABILITY FOR COPYRIGHT INFRINGEMENT ON THE INTERNET

State of copyright legislation in Ukraine reflects the lack of a systematic approach to regulating copyright legal relations in the digital age. As reflected by the lack of clarity in the legal terminology and ambiguous presence of contradictions between the Civil Code of Ukraine and the Law of Ukraine "On Copyright and Related Rights", there are gaps in legal matters relating to the protection of copyright in the information technology, and liability for copyright infringement in the field of information technology.

The article deals with the issue of regulation of liability for copyright infringement. There are different views on the definition of legal liability, including civil law for copyright infringement on the Internet. The characteristics of legal liability have been investigated. Thus, it is possible to give the following definition: liability is imposing on any person certain negative consequences established by law or other normative act for violating the rules laid down by society. Therefore, civil liability can be defined as imposing on the offender certain negative consequences of property offence that is manifested in loss of property or additional property responsibilities.

Analysis of experiences of foreign countries on the issue of liability for copyright infringement is carried out. The article determines the ways to improve Ukrainian legislation and makes suggestions to reform copyright law and general civil legislation concerning liability for infringement of copyright.

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THE PLACE OF PRIVATE INTERNATIONAL LAW IN THE LEGAL SYSTEM AND ITS RELATIONSHIP WITH PUBLIC INTERNATIONAL LAW

The article highlights the problem of the place of private international law in the legal system according to a scientific approach chosen to address this issue, as well as the investigation of the relationship between international private and public law in the context of comparativity.

First of all, we have to say that in any state the question of private international law plays an important role, and its essence leads to the fact that it is a system of legal rules aimed at regulating international private relationship with a "foreign element," the subject of private international law is only private relations with foreign elements or international private ratio, as well as issues of international civil procedure

It is established that the determination of the place of private international law in the legal system still remains controversial and important, but it is possible to confidently say that today we have three main concepts in this regard.

Also the author emphasizes that it is important to understand that the private international law should be distinguished from public international law by analyzing many criteria: the main attention should be paid to the main subjects of the law, sources, and methods of regulation. However, it is not appropriate to deny their relationship because this will violate the fundamental principles and ideas, which form the basis for the emergence and development of international law in general.

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FUTURE DIRECTION OF THE LEGISLATION DEVELOPMENT IN THE SPHERE OF LEGAL REGULATION OF OUTSOURCING AGREEMENT IN UKRAINE

The article analyzes the main possible areas of Ukrainian law in relation to the outsourcing agreement. First of all, the author defines actuality of the article, which is determined by the fact that for the participants of commercial and civil relations it becomes necessary to search for new forms of interaction because of the increasingly huge competition in the global and national economic market. Given that, the economic model of outsourcing can achieve a significant competitive advantage in the market, as more and more businesses use outsourcing in their work.

At the same time, the author emphasizes the main disadvantages of regulation of outsourcing contracts in Ukraine. Thus, considering the overall commercial and civil legal regulation of outsourcing contracts in Ukraine, uncertainty of its main categorical system and the legal nature of the contract are determined.

The outsourcing agreement is not expressly defined by Ukrainian legislation, the following legal ways of outsourcing contractual relationship are proposed in the article.

Firstly, it seems necessary to reform and strengthen the normative content of Chapter 63 of the Civil Code of Ukraine "Services. General Provisions", as this chapter summarizes the legal regulation of contracts that do not have a special regulation, and contracts that are not explicitly defined by law, but have legal right to exist, including the outsourcing contract. The promising directions in the development of the law on contracts of service call for immediate actions. There should be the formation of new and revision of existing rules of law, which compose the general provisions considering the contract services in Ukraine.

Secondly, it is important to bring the existing rules of national law in conformity with international law, namely strengthening the harmonization of contractual relationships of services governed by national law with international law.

Thirdly, there is a demarcation of outsourcing agreement in an independent legal institution for the arrangement of features and specific characteristics of the contract. All this determines the need for regulation of relations within the outsourcing contract in a special legal act. This act will define the legal nature of the contract with reference to outsourcing concepts, subjects, significant outsourcing contract terms and responsibilities of the parties.

Elimination of these disadvantages and application of directions in the outsourcing relationships development, analyzed in the article, will provide textual, structural and categorical unity.

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FOREIGN EXPERIENCE OF SOCIAL AND LABOUR RELATIONS LEGAL SYSTEM ORGANIZATION AND SPECIFICS OF THE LABOUR COURTS FUNCTIONING IN FRANCE

The paper is devoted to the study of the French experience in organization of the system of social and labour relations and the specifics of the functioning of labour (prud'homal) courts.

The author analyzes the structure and content of the Labour Code of France, namely directions on regulation of nine Books. The author presents the most typical features of the French model of social and labour relations: widespread application by state bodies of measures of the direct and indirect impacts; the availability of an extensive legislative framework; the use of target program approaches to the solution of social and labour issues; the recognition of social dialogue as the main form of coordination of interests of employers and employees; mobilization of social forces to run priority national tasks during the crisis periods; activity of employees and their representative bodies in protecting their rights; unification during conflict resolution in the form of conciliation procedures, and methods of pressure and force.

The experience of France concerning the responsibility of the employers for the violation of labour legislation, namely the system of penalties for employers who pay wages below the minimum level is considered. Typical structure of social action plans, which includes four main sections, is analyzed. The author investigates the components of forms and methods of regulation of social and labour relations in France, namely the annual report called "Social Balance", its obligatory components. The author also specifies French experience in the fight against mobbing, namely overcoming the negative consequences of collective psychological terror.

Special attention during the research is paid to the specificity of the organization of the labour courts of France, so-called "prud'homal courts". The author considers the jurisdiction of prud'homal courts, the procedural side of functioning of such courts, the manner of appointment of judges of the labour courts, the procedure of voters' lists formation, the principle of separation of specialized departments, as well as peculiarities of the rules of civil procedure production.

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ON APPLICATION OF THE SIMPLIFIED PROCEDURE IN COMMERCIAL PROCEEDING

The article is devoted to research of questions of correlation of the different existent simplified judicial forms of decisions on commercial (trade, economic) disputes, which will be optimum for the commercial proceeding of Ukraine. Foreign experience is analyzed in relation to the simplified procedures of decision on these disputes, on the example of judicial legislation of Belarus, Germany, and Russian Federation.

The special attention is paid to directions of development of the simplified procedure in the commercial proceeding of Ukraine. A conclusion is done, that commercial judicial legislation must move towards the formation of its own model of application of the simplified procedures taking into account world experience regarding this question. Such a procedure can be consideration of cases in the form of written (document) proceeding. It is discovered that the simplified procedure of consideration of cases will create additional measures of influence on discipline of participants of commercial proceeding in the context of timeliness of their affording evidences to the court and arguing the case. The above will allow to accelerate the acceptance of the final decision on the case, will be economic advantageous for the state and participants of the process.

Suggestions are given in relation to determination of categories of disputes, which can be expediently considered within the limits of written proceeding. Expedience of introduction in the commercial proceeding of appellate revision in form of written proceeding is determined.

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PRINCIPLES OF TRANSNATIONAL ENFORCEMENT PROCESS

This article is devoted to the research of the main principles of transnational enforcement process and their classification. The aim of the study is to consolidate and distinguish the main principles of transnational enforcement process that allow confirming expediency of excretion of such process as a separate sub-branch of enforcement process in national legal system.

As a result of the conducted research, the following classification of transnational enforcement process has been performed:

– general (constitutional) principles;

– special principles: branch (enforcement process) principles and sub-branch (transnational enforcement process) principles.

General principles have been determined such as: rule of law, legality, right to defense and humanism.

Special principles. Branch (enforcement process) principles of transnational enforcement process are the following: mandatory requirements of the state executor; principle of legal certainty; timely execution of writs of execution; sufficiently clear indication of the scope of state executor's discretion; right to challenge the legality of executive officials' actions; inadmissibility of imprisonment on the basis of inability to fulfill a contractual obligation; the inviolability of a minimum property necessary for the existence of a debtor and his/her family.

Sub-branch principles of transnational enforcement process are the following: reciprocity; equal treatment; priority of international treaties; guarantee of the right for translation; compliance of encouragement with national legal procedure.

Pointing out special principles of enforcement process allows additionally defining its place in a legal system as an integral sub-branch of enforcement process with a foreign element.

It is suggested to improve legal regulation of the enforcement process by amending the Law of Ukraine "On Execution Procedure" with provisions stipulating main principles of enforcement process and their characteristics.

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FREE PUBLIC LICENSES IN UKRAINE

The paper considers the problem of understanding of free licenses in copyright law, specifying their key features and role in the copyright regulation in legal system of Ukraine

The author analyzes modern scientific approach on defining free licenses in Ukrainian and Russian legal frameworks. It has been noted that in Ukraine there is no official legal definition for this type of license agreement.

The author argues the thesis that among the other groups of free licenses the most universal is a group of Creative Commons licenses. CC licenses are licensing agreements for the use of the copyright object according to specified in the license ways by anyone without the obligation to pay remuneration to the copyright holder and without any territorial restrictions. There are six groups and two protocols of CC licenses.

It is defined, that there are some theoretical positions that free licenses are a) contracts of adhesion b) unilateral acts. The author made a conclusion that the Creative Commons licences are bilateral by nature. The parties may have the restrictions on the certain types of permitted actions and the prohibition on the certain actions which are precisely determined in the license.

It is shown that, according to the Civil Code of Ukraine, the agreement concerning the granting of intellectual property rights should be concluded in written form. If the written form of the agreement concerning the granting of intellectual property rights is not complied, such a contract is void. There is no separate digital form of contracting in Ukrainian legislation. Consequently author concludes that the free public license by its legal nature is license agreement, however, according to the current Ukrainian legislation, such agreements are void at this moment.

Also, the author provided the necessary recommendations how to improve legal regulation of free license in Ukrainian legislation. These recommendations are related to the period, the territory of action, the opportunity to conclude free license contract in oral form etc.

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FEATURES OF COMPENSATION OF MATERIAL DAMAGES AND NON-PECUNIARY (MORAL) DAMAGES IN COPYRIGHT

The article emphasizes, that the concept of actual damages in copyright should be interpreted much more broadly than the destruction and damage of property. In some cases, damage to property is not inflicted, but the losses take place. For example, literary works can be damaged by their distortion. And as an example of actual damages is the victim's costs losses, which have been incurred due to the removal of distortions of the work.

Another feature is the loss of profit which the parties of copyright relations could get in case of normal implementation of their rights and obligations. Actual loss is characterized by the decrease of existing property (property sector) of the injured party. In the case of loss of profits, the available property does not increase, however, it could increase but for violation of the right. A characteristic feature of loss of profit is that the possibility of recovery depends on the specifics of a particular relationship. Thus, it occurs only in the case of commercial use of property. In addition, loss of profits has compensatory qualities. That is, the amount of profits, which must be reimbursed to the person, whose right has been violated, may not be less than the income, received by the person who violated the right.

The article states that the moral (non-property) damage in copyright law is mental suffering caused by non-property losses of the author of the work, or other subject of copyright, illegal acts or omissions of individuals, legal persons violating author's moral rights or infringing on exclusive property rights, as well as humiliation of honor, dignity and business reputation of the author of the work or other subject to copyright.

It is accentuated, that the court must carefully examine and evaluate all the circumstances that may affect the amount of monetary damages and moral (non-property) damage in copyright law. It should be done on purpose to determine the amount of pecuniary compensation. The right holder should be able to get a refund equivalent to the profit that he could get, if the illegal use would not happen. Only in this way it is possible to avoid the situation, when it would be more advantageous to violate copyright rather than observe it.

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THE NOTION OF THE SHARE INVESTMENT FUND

The notion of the share investment fund is researched in the paper. Author analyzes the legislative formulation of the notion of share investment fund, by providing a correlation between the notions “assets of the institute of collective investment” and civil-law category “property”. The issue of whether it is legislatively appropriate to use the term “assets” regarding to the share investment fund is raised. By analyzing the list of assets, which can compose share investments fund and comparing these assets with the category of property, author comes to a conclusion that the term property does not include corporate rights. Such conclusion is made by the author based on the fact that corporate rights are considered to be a compound category, which is composed of property rights and non-property rights. Because of the fact that the term property does not include immaterial objects of civil rights, the paper highlights that the lawmaker correctly used the term “a set of assets” when providing a definition of the share investment fund.

Further on it is elucidated in the paper that the category of assets, being an accounting term, is much more suitable for the operations, which are conducted by the management company of the share investment funds, despite the civil-law category of property, which cannot be effectively used in the law for instance in respect of defining the net assets value. The author also points out the EU legislation, which also uses the category of “assets” in its provisions regarding to collective investment schemes.

In conclusion, the author suggests conforming provisions of the Law of Ukraine “On Institutes of Collective Investment” with the basic law – the Civil Code of Ukraine, in particular with respect to its category “property”.

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LEGAL REGULATION OF THE STATE FINANCIAL SUPPORT OF THE ENTREPRENEURS: PROBLEMS AND WAYS OF ITS IMPROVEMENT

Paper notes that the State is directly interested in the development of business, but the shortage or absence of start-up capital for the business is the main aspect that hinders the development of such an activity in Ukraine. It is stated that the financial state support as a tool of the financial regulation of the business entities is used for the state financial support of the entrepreneurial activity.

It is determined that the main problems of legal regulation of state financial support of entrepreneurs are: a large number of non-systemized normative acts, regulating the state financial support, the lack of an effective control over the use of support as well as the analysis of the influence of the provided assistance on the development and effectiveness of the functioning of entrepreneurship subjects.

It is stated that for the efficiency of the state financial support it is necessary to reform the regulations of such a support of the entrepreneurs, prospective ways of which should be: the development and adoption of the bill on the state assistance of the entities, in which one must provide: a comprehensive list of the forms of financial state support for the entities and unified procedure of the ensuring of such an assistance; lack of tax measures influencing the reduction of the tax burden on the entrepreneurs as a form of the financial state support of the subjects; clear fixing of a single tender procedure to ensure financial assistance to the entrepreneurs and defining the criteria for the election of winners, that will reduce the subjective impact on the decisions of the competition commissions, ensuring the transparency of such a support; mechanism of the control over the use of the financial support of the entrepreneur, provided by the State, and the system of the analysis of the influence of such a support on the development and effectiveness of the functioning of the subjects of entrepreneurship; announcing the information concerning the financial support of the subjects of entrepreneurship; reduce the number of subordinate legislative acts regulating the procedure of getting a financial assistance.

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GENERAL QUESTIONS OF TRANSMISSION OF PROPERTY RIGHTS IN PLEDGE

The thesis is devoted to the scientific and theoretical research of legal nature and conceptual bases of property rights as a difficult legal category in the civil law of Ukraine, classification of property rights.

Separate attention is sanctified to the classification of property rights in the civil law of Ukraine and scientific efforts considering this issue.

The analysis of applicable Ukrainian legislation, law application practice, foreign countries' legislation and scientific literature allow drawing some theoretical conclusions and definite proposals on application and improvement of definite laws regulating the realization and classification of property rights.

It is possible to select the followings requirements to the property rights: 1) to be the object of civil law; 2) to imply the possibility of imposition of penalty on it; 3) not to carry the personal character; 4) in legislation there is no direct prohibition in relation to bringing of such right in pledge.

The article considers fundamental principles of development and action of property rights. The author states that there are yet a lot of questions which need consideration and revision: development of sphere of notarial services, evaluation and insurance activity, presence of the proper markets of valuable papers, selection of types of mortgage at legislative level. However, perspective potential of property rights in Ukraine is considerable and gradually it will be realized on condition of acceptance of the proper normative acts which will completely put legal norms into operation.

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SOME FEATURES OF CIVIL LIABILITY FOR DAMAGE CAUSED BY IMPROPER TREATMENT

The article examines the issue of bringing doctor (medical institution) to civil liability for the damage caused by improper treatment. In this regard, the article discusses the structure of tort and states that a person who has suffered damage as a result of improper treatment should provide only three grounds of the offense: a) the presence of damage; b) cause and effect relationship; c) the wrongfulness of the act (action or inaction).

Analyzing the current legislation, the author concludes that the Civil Code of Ukraine doesn't contain special section for damage caused by improper treatment. Section 1195 of the CC provides for compensation for damage caused by injury or other impairment of health, but the specificity of relations in the field of health care and the problem of proving a doctor's guilt in a trial determine the need to define the term "improper treatment". Given this, the article defines the notion of "improper treatment", which is regarded as a form of illegal act.

While considering the grounds of brining a civil action against a doctor (or a medical institution), the author points out that there is a problem of proving a cause and effect relationship, which is accounted for by the very nature of medical practice. In this regard, in order to establish a causal link between the act and the doctor harmed, it must meet certain requirements. Also, the article discusses the types of damage that can be caused by improper treatment, such as material and moral damage.

The author suggests consolidating the concept of "improper treatment" in the civil legislation of Ukraine. Making these changes to the basic code of civil legislation of Ukraine can expand legal opportunities for adequate protection of a person's right to health. However, the author points out that approval of the general rule that establishes the concept of inadequate treatment and establishes responsibility for it , is not sufficient for adequate protection of individual rights. In order to create conditions for the compensation of damages caused by improper treatment, it is reasonable to adopt a separate Law of Ukraine "On the Procedure of Compensation for Damages Caused by Doctors and Health Care Workers due to Improper Treatment".

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PROTECTION OF COPYRIGHT AND RELATED RIGHTS AGAINST PIRACY ON THE INTERNET BY THE LEGISLATION OF UKRAINE AND THE RUSSIAN FEDERATION

The paper considers the problem of regulation of piracy on the internet in Ukraine and the Russian Federation for further comparison of provisions contained in the legislation.

The author notes that there are certain shortcomings in the protection of copyright and related rights on the internet. First of all, these problems deal with the responsibility of ISPs (internet service providers), as well as problems of proving the existence of the offense and recovery of compensation of damages caused by the infringement of copyright and related rights. In fact, if we consider piracy in the law of Ukraine "On Copyright and Related Rights", it is seen that these rules are mostly in line with international standards. Certain problems arise at a time of the need for the implementation of these provisions. Also the author points out that piracy has become such a problem not only because it brings some financial benefit to the citizens, but because the majority of the world cannot afford to buy a license disc and pay-per-view movies on the internet. That is why they prefer pirate, unlicensed content. The Russian Federation has adopted a law on amendments to some legislative acts, an important step in resolving the issue of internet piracy. However, in Ukraine the law has not been adopted, there is only a bill that should be adopted.

The proposed approach in the paper is that amending the legislation Ukraine must benefit from the experience of the Russian Federation. However, first of all, it is necessary to reach an agreement with the internet community, which will have some problems due to these changes.

Chapter 3

ENVIRONMENTAL LAW

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INTERRELATION OF THE CONCEPTS "ENVIRONMENTAL RISK" AND "ECOLOGICAL SAFETY"

The article investigates the interrelation of such legal categories as "ecological safety" and "environmental risk" in the context of ensuring constitutional rights of citizens of Ukraine in safe (healthy) environment. It is established that the formation of legal relations in the sphere of ecological safety took place simultaneously with the development of the concept of environmental risk. Environmental risk is expressed in the relationship with ecological hazard because it foresees the occurrence of certain complex event at any predicted interim. Risk is a category connected with a process of "actualization of the hazard." A great difference in the assessment of environmental risks hinders the widespread use of methodology in environmental activity.

The concept of public safety and safety of the environment, practice in the field of risk management (environmental management) should be constructed in such a way so that society as a whole received the most affordable set of free goods at the lowest possible threat to their existence. Both factors – the level of welfare of people and environmental quality – are equally important in the development of risk management strategies. Environmental risk is higher for regions with high pollution industry, in earthquake-prone areas, in areas experiencing intense floods etc. The article gives reasons for interrelation of economic and ecological factors and their impact on human longevity that provides the opportunity to speak about eco-economic safety of the person.

It is concluded that the main difference between the concept of environmental risk and normative approach to the evaluation of environmental pollution and its degree of hazard to human health is as follows: environmental risk is a theoretical model of calculation of the probability of adverse events occurrence, and regulatory approach is an empirical method based on numerous experiments.

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ON THE QUESTION OF THE MECHANISM OF AGRARIAN LEGISLATION AND HARMONIZATION WITH EU LEGISLATION

For efficiency of the legal mechanism of interaction between the EU and Ukraine, it is important to establish a system of legal remedies and measures that would ensure the integration process at each stage accordingly. This system of measures should include: 1) a comparative legal study of legal systems of the EU and Ukraine, identification of their characteristics; 2) determination of the optimal form of harmonization, unification and appropriate means of implementation; 3) determination of the types and levels of harmonization and unification of areas and boundaries of their application; 4) identification of modalities for the implementation of these procedures; 5) establishment of appropriate mechanisms for conflict settlement; 6) harmonization of terminology and glossary creation.

The purpose of the work is to review and study the characteristics of the agricultural harmonization of legislation of Ukraine and EU legislation as part of harmonization of legislation in general. They are based on national programs and concepts of legal reforms that are now carried out by public authorities in Ukraine. The realization of these objectives is manifested in the need to ensure that the agrarian legislation of Ukraine complies with European standards. Harmonization of agrarian legislation of Ukraine and EU legislation requires special attention in the research of agrarian relations in Ukraine related to the implementation of legislation through Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine, and directly causes efficient functioning of institutional mechanism of approximation of Ukraine to the European Union.

The study applied an empirical method, comparative law, and deductive method.

Results determine common characteristics and features of the institutional mechanism for the harmonization of legislation of Ukraine and EU.

Harmonization of legislation becomes important not only as strategic tool of Ukraine in the process of EU approximation, but also as a direct tool of access of Ukrainian goods and services to market of EU Member States. This determines the need for change in the approach to planning and carrying out activities on approximation of legislation, including processing and transfer from annual planning of adaptation measures to better medium– and long-term planning. With a view to this the Government of Ukraine on the basis of the project of initialed Association Agreement of Association Agenda and other bilateral agreements reached in the framework of bilateral agencies collaboration, developed appropriate internal work plans, in order to ensure effective interaction between public authorities during the National Programme of Approximation of Ukrainian Legislation to that of the European Union. The current national regulatory framework on bringing provisions, developing draft legal acts on regulation of agriculture policy in line with

EU legislation only partially meets the needs of the time and do not always cover all the key elements that are necessary for the effective implementation of state agricultural policy aimed at effective management of agricultural production and land use, supporting agricultural production, promoting integration processes in agro-industrial complex, forming conditions for conservation and integrated development of rural areas and supporting business initiatives in rural areas.

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LEGAL REGIME OF LANDS OF CAPITAL CONSTRUCTION: HISTORICAL AND LEGAL ANALYSIS

The article is devoted to research of historical factors and sources that are the basis for legal regulation of the legal regime of lands of capital construction. It is shown that any phenomenon, including legal phenomenon, is the result of impact of many factors (economic, political, historical, social etc.). Thereby the author considers the historical beginnings (sources) in the sphere of legislative regulation of legal regime of lands of capital construction.

The author confirms that development of the relations considering land using for capital construction is the basis for the periodization of normative and legal regulation of the legal regime of lands of capital construction. In regard to this, it is proposed to determine the following stages in the history of capital construction development and use of lands of capital construction: I – use of lands of capital construction in the period of first cities' foundation in the states of Ancient Near East and Antiquity; II – capital construction during the period of feudal relations; III – use of lands of capital construction in the industrial period; IV – use of lands of capital construction in the era of transition to the postindustrial society.

It is defined that main vectors of normative and legal regulation should be focused on environmentalization of land and town planning legislation in the sphere of use of lands of capital construction nowadays. Among these methods of environmentalization the author singles out use of lands of capital construction on the basis of ecological capacity of areas, green building, and the creation of green areas in the city (town) planning process and during human settlements' capital construction.

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ON THE DEFINITION OF THE CONCEPT "THE USE OF LANDS FOR FORESTRY PURPOSES"

The article is devoted to the necessity to define the concept "the use of the lands for forestry purposes" for further use of this concept in the scientific literature. This topic is relevant due to the intensive use of lands for forestry purposes, and the necessity of their integrated regulation.

Forests of Ukraine are its national wealth and, according to their purposes and location, they serve mostly water, protective, sanitary and hygienic, health, recreational, aesthetic, educational, and other functions and are the source for needs of society in forest resources. In Ukraine, the forest industry is one of the most stable in the national economy for a long time and it does not lose its positions even in times of crisis. Forestry, like other natural resources of Ukraine as land, water, minerals, and air, is the national treasure and, according to the Article 13 of the Constitution of Ukraine, is the property of the Ukrainian people.

It was determined that one of the main features of the legal regime of lands for forestry purposes is the inextricable connection of their use with the forest management. The use of forest resources can be realized in general and special use.

The author has determined that the use of lands for forestry purposes can be considered in objective and subjective meaning. In the objective meaning it is the complex of legal rules that establish conditions and the order of use, preservation, restoration and protection of lands for forestry purposes. In the subjective meaning it is determined by the objective right possibility of physical and legal persons to carry out the realization of rights and obligations regarding the use of lands for forestry purposes. The use of lands for forestry purposes is a guaranteed by the law possibility to use the forest lands in order of general and special use of the forest resources to satisfy essential needs and use of lands not covered with forests, non-forest lands, occupied by agricultural lands, waters and marshes, buildings, communications, unproductive lands, etc., which are provided in the determined order and used for forestry purposes.

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USE OF THE EUROPEAN MODELS OF LOCAL PARTNERSHIPS IN THE FIELD OF RURAL DEVELOPMENT AND ITS ADAPTATION TO NATIONAL LEGISLATION

The article describes local partnerships as one of the most optimal ways of rural development. Special attention is paid to the European experience of local partnerships in the field of rural development and characteristics of its adaptation to the national legislation, because some areas of Ukraine have already made first attempts to implement local partnerships, and the results turned out quite satisfactory.

The relevance of the legal support of local partnerships in the field of rural development in Ukraine is caused by the urgent need to solve the existing problems of modern rural areas which significantly hinder the sustainable development of rural areas.

The article aims to explore the importance of the European development of local partnerships for the development of rural areas and substantiate the reasons for its implementation in the national legislation of Ukraine.

As a result of the use of historical, dialectical, formal and logical, comparative and legal methods, as well as a method of analysis and synthesis, the basics and ways of legal regulation of local partnerships in the field of rural development, as well as the results of its implementation, have been studied; special attention has been paid to the European practice of the legal support of local partnerships regarding rural development, which has generated even more claims that this form of cooperation can provide for economic and demographic sustainability in rural areas, contribute to solving social and economic, industrial, and environmental problems of rural areas, and become a significant factor in rural perspective development; the basic idea of the local partnership and its possible and mandatory members, as well the benefits arising from the use of the program of local partnerships in the region, have been examined; as a result of the research, it has been proposed to improve the legal regulation of local partnerships regarding rural areas and adopt a specific regulatory act that would protect local partnership as one of the feasible ways of rural development, and would determine the legal basis of its operation; an attempt to define local partnership in the field of rural development has been made.

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STAGES OF LEGAL REGULATION OF WETLANDS IN UKRAINE

The analysis of the regulation of the natural object as wetlands is difficult to carry out without understanding of its development. The formation of wetlands regulation is affected by the social and political conditions of a specified period, determined by the features and character of the land system. The main motivating factor in the history of the legal regulation of wetlands was an interest in them firstly as a source of fuel, then as grasslands and reserves of land fund, which require drainage. At present, interest in wetlands appears in terms of their protection and conservation.

The process of introduction and establishment of wetlands regulation in Ukraine includes several relatively independent stages: 1) 1019 – 1782 – formation of wetlands regulation in Ukraine under certain provisions of land law inextricably linked to the peculiarities of legal regulation of protection and use of all land, including agricultural land; 2) 1782 – 1917 – the beginning of active study of wetlands in Ukraine, which was part of the Russian Empire and the lands of the Western Ukraine, associated with peat extraction and land melioration; 3) 1917 – 1990 – a stage that is based on the legislative strengthening of exclusive state ownership of all natural resources, regulation of the national economy of their development. The adoption of several versions of the Land Code of the Ukrainian SSR, Water and Forestry Code of the Ukrainian SSR, which governed the use and conservation of wetlands in the Ukraine; 4) 1990's – till present – attempts to solve the problem of preserving the genetic stock and the protection of wetlands in Ukraine as unique natural complexes. Legal provisions on wetlands occur within the land, forest, and water legislation.

Thus, regulation of wetlands in Ukraine is not a complete legal regulation, and therefore needs further improvement based on historical and legal heritage.

Chapter 4

CURRENT PROBLEMS OF ADMINISTRATIVE LAW AND PROCESS, FINANCIAL LAW

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ADMINISTRATIVE ASPECT OF STATE ADMINISTRATION IN THE FIELD OF MONITORING OVER COMPLIANCE WITH LABOUR LEGISLATION OF UKRAINE

This article analyzes the scientific research of problems of public administration in the field of monitoring over compliance with labour legislation. It considers the activities of State authorities, which perform public administration in the field of monitoring over compliance with labour legislation, including State Labour Inspectorate. The problems, which arise in the course of inadequate implementation of state management in the sphere of control over observance of the labour legislation, are identified.

The article also describes the powers of the State Inspectorate of Ukraine concerning labour issues. Problem points, which arise during implementation of control activity by inspectors of labour, are specified. The statistical data on violations of the State Labour Inspectorate in the sphere of control over compliance with labour legislation of Ukraine, namely in the following matters: compensations, conclusions and implementation of the employment contract, registration of service records, non-compliance with requirements of labour discipline, realization of conditions for collective agreements and others.

The basic concepts are "control" and "supervision" over compliance with labour legislation, which are treated differently, as scientists in the sphere of administrative law and labour law, but have the same value.

The article examines a range of problems which need to be taken into account to implement more effective work of the supervisory bodies, in particular the State Labour Inspectorate.

State management in the sphere of control over compliance with labour legislation is relevant in the field of scientific research and will give positive results in the creation of appropriate regulatory conditions in the direction of managing labour relations and labour in General.

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ON THE QUESTION CONCERNING LEGAL BASIS OF THE STATE SERVICE REGULATION

The legal basis of the state service regulation is a body of normative-legal acts that create a special system, which can be characterized by the following features: this system contains numerous normative-legal acts that differ by legal effect, subject of publishing, scope of action and circle of relations that are regulated by them.

On the basis of conducted analysis the author made the following conclusions. The Constitution of Ukraine defines the main basis of organization and activity of the state service either directly or by the activity of state bodies. Opposite to many other complex institutions and fields that operate only general legal constitutional principles of legality, supremacy of law, democracy etc., functioning of the state service and state service regulation is made on the basis of general legal constitutional principles and also on the basis of special principles that are applied only to the state service institute. Laws of Ukraine that are adopted in a proper way by the Verkhovna Rada of Ukraine develop constitutional provisions, define the system of bodies that directly carry out the state service regulation, assign their legal status and authority. The President of Ukraine carries out the general guidance of the state service, in the frame of fixed credentials he adopts the decrees concerning the realization of the state service regulation that are obligatory for all subjects of appropriate relations. Normative legal acts of the Cabinet of Ministers of Ukraine are sublegislative acts that are adopted on the basis and for detailing of laws, and promote more effective law enforcement. They can also be considered as legal acts of public regulation and their aim is realization of regulation of relations that arise in the sphere of state service that is the regulation of the state service. Normative legal acts of the National agency of Ukraine on the questions of state service are extremely important, because they provide methodical maintenance, organizational ensuring of the activity on the state service regulation. The Constitutional Court of Ukraine in the frame of its competence can adopt normative legal acts that come forward as the act of control concerning previously adopted normative legal acts.

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THE MAIN PRINCIPLES OF PUBLIC ADMINISTRATION AS A GUARANTEE OF HUMAN RIGHTS AND FREEDOMS PROTECTION

The article investigates the content and essence of the basic principles in public administration activity and observes the implementation of these principles at the present stage in the context of human rights and freedoms protection.

Article makes accents on the necessary condition for the effective organization of government bodies in the sphere regulated by the principles of its activity and also describes the foreign expert knowledge, which is necessary for improvement of the Ukrainian authority mechanism.

Current state of observance and introduction of the principles of public administration remains unsatisfactory and needs to be improved. This fact defines the relevance and prospect of this research.

The main practices of article are based on the analysis and synthesis of the separate principles of leadership and ideas of public administration, and also introduction of the basic principles which guarantee the rights and freedoms of man and the citizen.

The principles of the organization and activity of authorities is understood as basic legislative principles, leading ideas, general provisions which create the basis of formation, organization and introduction of tasks of government bodies. They are divided into the general principles concerning system of public administration as a whole and special, which are valid only for separate subsystems, members of the system or some government bodies.

Depending on action scale they are classified into general and institutional. In their turn, the general principles depending on a form of legal confirmation are divided into two groups. The first group consists of the basic principles which have been written down in the first section of the Constitution of Ukraine: unitary, the highest value of social rights and interests, rule of people, humanity, rule of law, democracy, and division of powers. Other group consists of principles which are inferior to basis of constitutional order: professionalism and competence, efficiency, equal access to services, independence, a combination of the state and local interests, collegial and individual management.

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THE CONCEPT OF LEGAL AND ADMINISTRATIVE REGIMES

The process of development of democratic state in Ukraine, the main objective of which is to affirm and ensure human rights and freedoms, is directly related to the need to improve the mechanism of regulation in certain areas of public relations, which require special measures to maintain normal lives and existence of state institutions. Basically, this task is performed by the application of administrative and legal regimes, including passport and registration regime of migration.

Analysis of current legislation of Ukraine indicates that the overall problem with the use of administrative and legal regimes in Ukraine today is solved. Their general legal principles established by the Constitution of Ukraine are further consolidated in special laws and other legal acts.

Among researchers there is no consensus on the definition of the legal nature of administrative and legal regime.

Traditional for the Soviet administrative law view on the legal nature of administrative law regime as a set of tools of social relations regulation in an emergency situation persists in modern administrative law.

Thus, the administrative and legal regime should be understood as the specific operational activity of legal subjects in different spheres of social life, the establishment and management of which takes place through special legal measures.

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FORMING OF MIGRATORY POLICY OF UKRAINE IN COMBINATION WITH INTERNATIONAL LABOUR MIGRATION

Analyzing the of long-lasting process of forming of migratory policy, today it is difficult to assert that Ukraine has the fully developed and grounded system of actions in migratory direction in accordance with international standards. The substantial improvement of migratory policy can be attained due to deepening of collaboration with the developed countries, integration groupings (mainly EU) and specialized international organizations.

During the first stage of forming of migratory policy of Ukraine which was completed at the end of 1990th, its constituents and principles were determined, legislative bases were developed, the proper executive branches were created, and bases of international cooperation were formed. Certain experience was additionally accumulated from its realization, implementation of the accepted legislation which enabled to find out his failings and gaps. The task of their improvement was determined by the estimation of efficiency of legal norms. Acceptance of Constitution, participation of Ukraine in the major international legal agreements in the field of human rights, in particular, European Convention on Human Rights, required bringing migratory legislation to conformity with these documents.

Efficiency of migratory policy depends on the harmony of all measures of influence applied to an economic complex and society. As a basis of forming of migratory policy of Ukraine it is necessary to choose the dominants of policy of the developed countries of the world, which incarnate the globally oriented approach in the solution of problems of migration regulation. The special attention must be paid to changes in the migratory policy of countries (different groups) and integration groupings within the framework of which the concordance of actions is carried out in relation to regulation of international labour migration.

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PRINCIPLES OF PROVIDING ADMINISTRATIVE SERVICES IN MARITIME TRANSPORT

Understanding the regulation of administrative services in the field of maritime transport would be incomplete without defining principles for latter, which also have a legal regulation. Note that the activities of the public administration, providing administrative services in the field of maritime transport, must meet certain principles that reflect the nature and essence of this activity.

The theoretical study of the principles of administrative services in the maritime transport involves primarily analyzing existing theoretical developments of scientists of this issue.

The principles of administrative services in the field of maritime transport can be divided into three groups. Thus, the general principles of public administration in general and the State Inspectorate of Ukraine on security in maritime and river transport in particular include the following principles: 1) the rule of law; 2) rule of law; 3) openness as disclosure and accessibility of information for citizens about the activities and decisions of public administration and providing public information at the request of citizens; 4) proportionality as a requirement to limit the purpose of making the public administration, which is to be achieved, the conditions of its achievement and the responsibilities of public administration consider the consequences of their decisions, actions and inaction; 5) responsibility as a duty of public administration to bear legal responsibility for decisions, actions and inaction of others.

The special principles of administrative services in the maritime transport include the following: 1) the principle of legality; 2) the principle of tacit consent; 3) single window; 4) stability; 5) equality before the law; 6) the efficiency and timeliness; 7) the availability of information on the provision of administrative services; 8) protection of personal data; 9) the principle of priority of safety of life, health, safety and the environment and the state over economic benefits; 10) the principle of organizational unity.

In turn, the third group of principles constitute procedural principles of administrative services in the field of maritime transport: 1) the principle of efficiency; 2) impartiality; 3) the principle of participation in decision-making; 4) the principle zasnovanosti on the law; 4) cancel (or revocation of unlawful administrative act); 5) the principle of transparency and a number of others.

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THE PROCEDURE OF GIVING PERMIT FOR CONCENTRATION OF MARKET PARTICIPANTS AS A SPECIFIC KIND OF ADMINISTRATIVE PROCEDURES

The article aims to research the procedure of giving permit for concentration of market participants as a specific kind of administrative procedures. The author has proved that the procedure of giving permit for concentration of market participants is a specific kind of administrative procedures and one of the procedures in the field of protection of economic competition.

The author offers the following definition: the procedure of giving permit for concentration of market participants is a set of acts regulated by the administrative law which are executed by the authorized part of the public administration – the Anti-Monopoly Committee of Ukraine in the terms of solving an individual case in providing an opportunity to realize the process of joining economic resources under an integral control; the result is the adoption of an individual administrative act (the decision to give the permit).

The procedural stages for giving the permit for concentration of market participants are: 1) applying for the permit; 2) the Antimonopoly Committee's decision to give the permit or set the case hearing on concentration; 3) case hearing on concentration; 4) applying to the Cabinet of Ministers of Ukraine for giving the permit for concentration which has been forbidden by the Anti-Monopoly Committee. The first three stages are essential, the last one is optional.

The author makes a conclusion that the procedure of giving the permit for concentration is functional, declarative, permissive, non-jurisdictive, simplified (in the case of making a decision by the Anti-Monopoly Committee without hearing) or usual (in the case of hearing a case on concentration).

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SOME ASPECTS OF DEFENCE OF TAXPAYERS' RIGHTS

The article analyzes separate rights and duties of the taxpayers, envisaged in current tax legislation and highlights some problems that arise during their realization.

Some right and duties of taxpayers, plenary powers of tax authorities envisaged in a current legislation are considered. The article draws the conclusion about the specification of rights and duties of taxpayers, supervisory authorities, and establishment of responsibility of tax and supervisory authorities.

Some problems one faces during realization of rights and duties of taxpayers and tax authorities are reflected, and the ways of their solution are given: to complicate the procedure of cancellation of registration of VAT-payers, namely to pass it to the competence of court, and to make decision on maximal size of debt; the problem of abandonment of complaints of taxpayers without consideration is considered and it is proposed to give possibility to the taxpayers to repeatedly act against the tax authorities and oblige tax authorities to examine such appeals or pass possibility of taxpayers to appeal to the competence of court; to consider problem of realization of compensation of harm to the taxpayers, inflicted by actions or omissions of tax authorities and propose compensation through extinguishment of tax debt in case of its presence.

Attention is paid to absence of circumstances that attenuate or abolish responsibility of taxpayers, the necessity of their including is reasonable for the Tax Code of Ukraine. A comparative analysis is conducted considering the legislation of foreign countries. Thus, it is offered to make changes in the Tax Code of Ukraine, namely: to provide abolition of registration of VAT-payers through a court, and attenuate financial responsibility.

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LEGAL REGULATION OF THE USE OF ADMINISTRATIVE ENFORCEMENT ACTIONS FOR VIOLATION OF LICENSING SYSTEM IN BELARUS

The article is devoted to comprehensive, systematic scientific analysis of the legal basis and the application of administrative enforcement actions for violation of licensing system in Belarus. Legal grounds for the application of administrative enforcement for violation of licensing system in Belarus are defined.

It is established that the main purpose of licensing system in the Republic of Belarus in the field of law enforcement and security is to prevent improper use of appropriate items to prevent unauthorized actions.

Measures to implement licensing systems help to some extent to prevent the commission of more serious crimes such as murder, robbery, theft, act of terrorism, explosion, radioactive contamination, poisoning, etc., thus, early detection of violations of the licensing system, especially in the field of civic arms and ammunition to it, and prosecution of the guilty persons are the most important tasks of the militia.

The author states that the study of the experience of the Republic of Belarus on legal regulation of licensing system in the Republic of Belarus deserves attention in order to improve operations and further development of the licensing system in Ukraine.

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ADMINISTRATIVE ARREST OF TAX PAYER'S PROPERTY AS AN EXCEPTIONAL ENSURING MEASURE OF TAX OBLIGATION EXECUTION

The article is devoted to the administrative arrest of tax payer's property as an exceptional ensuring measure of tax obligation execution.

The author emphasizes that coercive nature of collection of taxes and duties, provided by the Main Law of the State – The Constitution of Ukraine, determines the necessity of implementation of enforcement measures in tax law, such as ensuring measures of tax obligation execution. It is also highlighted that ensuring measures of tax obligation execution, including administrative arrest of tax payer's property, are designed to prevent taxpayers from tax avoiding and tax evasion. The complex essence of the category of administrative arrest of tax payer's property as one of the ensuring measures of tax obligation execution is discovered, and the peculiarities of the procedure of administrative arrest imposition as well as its distinguishing features are determined. It is clearly shown that such coercive measure as the administrative arrest of taxpayer's property is a powerful legal tool. It enables to prevent from not paying taxes to the State, and therefore it stimulates tax payers to fulfill conscientiously their constitutional obligation.

The main definitions of the administrative arrest of property, given by various scientists, are discussed. The attention is also drawn up to analysis of the legal acts, judicial practice as well as to the scientific works of authoritative scientists determining tax lien has been conducted.

However, the attention was also drawn to some gaps in tax legislation in respect of the mentioned exceptional ensuring measure. Systematization of the list of legal grounds, which enable to impose the administrative arrest on a tax payer's property, was proposed. When investigating the legal nature of the administrative arrest of tax payer's property, the author comes to a conclusion that it is essential either for theoretical researches, or for legal practice to indicate criteria of imposition of different kinds of the mentioned measures, as well as the terms of its validation on the legislative level.

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ON THE QUESTION CONCERNING LEGAL BASIS OF THE STATE SERVICE REGULATION

The legal basis of the state service regulation is a body of normative-legal acts that create a special system, which can be characterized by the following features: this system contains numerous normative-legal acts that differ by legal effect, subject of publishing, scope of action and circle of relations that are regulated by them.

On the basis of conducted analysis the author made the following conclusions. The Constitution of Ukraine defines the main basis of organization and activity of the state service either directly or by the activity of state bodies. Opposite to many other complex institutions and fields that operate only general legal constitutional principles of legality, supremacy of law, democracy etc., functioning of the state service and state service regulation is made on the basis of general legal constitutional principles and also on the basis of special principles that are applied only to the state service institute. Laws of Ukraine that are adopted in a proper way by the Verkhovna Rada of Ukraine develop constitutional provisions, define the system of bodies that directly carry out the state service regulation, assign their legal status and authority. The President of Ukraine carries out the general guidance of the state service, in the frame of fixed credentials he adopts the decrees concerning the realization of the state service regulation that are obligatory for all subjects of appropriate relations. Normative legal acts of the Cabinet of Ministers of Ukraine are sublegislative acts that are adopted on the basis and for detailing of laws, and promote more effective law enforcement. They can also be considered as legal acts of public regulation and their aim is realization of regulation of relations that arise in the sphere of state service that is the regulation of the state service. Normative legal acts of the National agency of Ukraine on the questions of state service are extremely important, because they provide methodical maintenance, organizational ensuring of the activity on the state service regulation. The Constitutional Court of Ukraine in the frame of its competence can adopt normative legal acts that come forward as the act of control concerning previously adopted normative legal acts.

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PRINCIPLES OF THE DISTRIBUTION OF INCOMES BETWEEN THE LINKS OF THE BUDGET SYSTEM

After acquisition of sovereignty, the establishment of the national financial system of Ukraine began. An important component of this process is the revival of local finance as an objective political and economic reality inherent in the financial systems of all modern civilized nations, which is associated with dramatic change in the concept of state power.

The relevance of a theme is defined by necessity of creation of an effective system of income distribution at a local level in conditions of the limited financial resources for formation of the balanced local budget.

Main directions of improving legal income distribution between budgets in budget system are determined.

The principles of legal regulation of income distribution between the links of the budget system are investigated and analyzed.

The author examines the system of charges and income distribution between state and local budgets of Ukraine.

In the article the problems of distribution of resources of payments between budgets are examined, their division by regions of Ukraine is analyzed.

Conceptual approach to the improvement of the national system of interbudgetary relations is examined.

Purpose of the work is to study in general terms the range of problems and trends considering the distribution of budget expenditures and justify their solutions in the realities of today.

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PROBLEMS OF CLASSIFICATION OF DISCIPLINARY OFFENCES OF PUBLIC SERVANTS

The article is devoted to the theoretical study of the features of the legal status of public servants in Ukraine, analysis of the current legislation governing the legal status of civil servants, the study of the various positions on the use of the term "disciplinary liability", determination of problems of legal regulation of the status of this category of persons and directions of their improvement.

The purpose of the study on the basis of comprehensive analysis of the current legislation of Ukraine and generalization of its practical application is the concept of discipline and problems of classification of disciplinary liability of civil servants, their difference from other offenses.

While preparing the article, the author used scientific legal literature: monographs, periodicals, legislation and jurisprudence of Ukraine. The study allowed the author formulating valid conclusions.

Thus, the author classified disciplinary offences for different criteria, distinguishing them according to subject, object and severity of disciplinary offence.

The author proposed amendments to the current legislation on the public service to include a number of basic principles to the public service, such as principles of ethics, moral behavior of a public servant.

The author states that the law should specify standards of honesty, selflessness, objectivity, truth, dignity, turning them into official rules, which can be demanded, and the violation of which shall result in disciplinary action in accordance with the procedure established by law. The principle of fair conduct in the service is an obstacle to corruption-threatening behavior.

Chapter 5

PROBLEMS OF IMPROVING THE CRIMINAL JUSTICE SYSTEM AND COMBATING CRIME

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REGARDING THE CONTENT OF THE PURPOSE OF CRIMINAL JUSTICE IN UKRAINE

The article discusses the content of the purpose of criminal justice. The aim of this work is to research the provisions on mandatory elements of the internal content of the category of purpose of criminal justice in Ukraine. The author investigates the theoretical provisions of Russian scientists. The paper highlights that the researchers studied the purpose of criminal proceedings mainly through the prism of the content of Art. 6 of the Criminal Procedure Code of RF, dedicated to this systemic factor. Russian legislator sees the content of this category in protection of the rights and legal interests of individuals and organizations affected by the crime, protection of individuals from illegal and unwarranted accusation, conviction and restriction of rights and freedoms. In addition to "standard" for scientific circle provisions of the CPC, the second part of this provision defines axiological orientation for all criminal proceedings, according to which the prosecution and appointment of just punishment for guilty fall under the category of the purpose of criminal justice to the same extent as the failure to prosecute the innocent, release them from punishment and rehabilitation of anyone unreasonably prosecuted. Closely related to the content of the purpose of criminal justice is recognized the position of researchers, which most clearly distinguishes content of purpose of criminal justice based on its specificity compared with other branches of the criminal law. In conclusion, the author notes that the essence of the purpose of criminal justice as the field of procedural law should be organically linked to the substantive law and implemented through procedural form. The purpose of criminal justice, according to the author, should not include provisions reflecting the reasons for existence of all branches of the criminal law or ones defining the general rules regarding several legal spheres. It is noted that the above derivation does not reveal the full purpose of criminal justice and does not specify a sufficient level of its internal substantive elements. These gaps must be taken into account in subsequent studies.

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BASIC COMPONENTS OF HUMAN RESOURCING OF PROCURACY ACTIVITY

The author considers human resourcing as the key element of system of prosecutor's offices in Ukraine. It is underlined that with the transformation of social relations alterations concern only demands to personnel as well as personnel procedures but not to the role and significance of human factor in effective activity of a body or system of bodies.

The work provides such definitions as "human resourcing of procuracy activity", "mechanism of procuracy activity securance" and develops the meaning of these definitions.

The author analyzes legal framework of basic components of human resourcing: selecting, arrangement, vocational training and personnel education. He also comes to the conclusion that there is necessity of improvement of Law of Ukraine "On the Public Prosecutor's Office" as well as departmental normative basis of procuracy bodies. In particular, the author offers to state demands on good state of health of individuals who aspire to the position of prosecutor or those who are already working in prosecutor's office; to determine the age which allows an individual to fill a prosecutor's post. The work draws attention to inconsistency of departmental normative basis: absence of accuracy and single content of some definitions.

The author proposes to unify the procedure of personnel selection for procuracy bodies.

The article pays attention on activity of National Prosecution Academy of Ukraine as educational and scientific institution for specialized training of prosecutors and other procuracy workers as well as their professional development. Moreover, the author stresses the necessity of real approximation of the Academy's educational practice to the needs of procuracy bodies in their practical activities.

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AN ORGANIZED GROUP AS A FORM OF COMPLICITY

This article is devoted to the actual question in a theory of criminal law about an organized group, which is one of forms of participation in a crime. The article substantiates the high degree of social danger of crimes committed by an organized group, which is fixed in the framework of the institute of punishment as a circumstance that aggravates punishment.

In accordance with p. 3 Article 28 of the Criminal Code of Ukraine "a criminal offense shall be held to have been committed by an organized group where several persons (three or more) participated in its preparation or commission, who have previously established a stable association for the purpose of committing of this and other offense (or offenses), and have been consolidated by a common plan with assigned roles designed to achieve this plan known to all members of the group". We study the objective and subjective features of an organized group. Opinions of scientists and elucidations of higher judicial instance also were analyzed in the article. Thus, we think, that, describing the intellectual and volitional characteristics of intent, it should be noted that, participant of the organized group should be aware that he or she is a part of an organized group, is involved in the implementation of a part or a complex of mutually agreed actions and commit together with other accomplices the same crime with the distribution of roles according to pre-compiled plan, which envisages criminal result common for all the participants. Author's suggestion is brought in relation to legal definition of an organized group, which, obviously, should include both objective and subjective features.

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A JURY TRIAL ACCORDING TO THE NEW CRIMINAL PROCEDURE CODE OF UKRAINE

This scientific article presents the history of formation of the jury, issues on its functioning, operating principle and practical application in the criminal trial of Ukraine. The article draws attention to the fact that the essence of a jury is that the jury, not being professional judges, makes decisions based solely on their life experiences and social concepts of fairness, legality and impartiality. Therefore, the main task of the jury is establishment of the fact, i.e. deciding whether it was a crime, whether the crime was committed by the accused, if he was guilty of committing it and if he deserved leniency. The author concludes that the adoption of the new Criminal Procedure Code of Ukraine and the introduction of the institution of the jury in the criminal trial of Ukraine provide evidence that we have taken the first step towards the democratization of criminal proceedings. Practical application of its rules in regard to the jury will discover the advantages and disadvantages of criminal procedure and the institution of the jury will allow drawing conclusions and finding ways to improve it. Trial by jury as a whole allows creating the necessary conditions for the further implementation of law-governed state's ideas in the sphere of justice, strengthening the credibility of the court, ensuring fairness, protection of human rights and freedoms. However, today it is impossible to determine exactly whether there is a need for the jury in Ukraine or not. There are many problems that prevent a final solution of this issue from being found. Creating full-rate juries in Ukraine must be conducted carefully, taking into account the experience of Western countries. However, it would be even better if the first juries would be organized as individual experimental courts. In general, it is needed to improve the nation's legal consciousness and morality, because such a court must first of all be based on moral factors, sense of fairness and impartiality.

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PREPARATORY ACTIONS FOR REALIZATION OF INVESTIGATIVE EXPERIMENT

In the article the basic elements of preparatory actions for realization of investigative experiment are considered.

It is noted that careful planning of carrying out various investigative actions provides tactics of its realization, promoting targeting of the last and, finally, economy of procedural means, because by realization of one investigative action it allows finding out plurality of the circumstances necessary for investigation.

Besides, the basic rules of planning developed by criminalistics promote compliance of pretrial investigation with the requirements of the law, namely – objectivity, completeness and comprehensiveness.

Preparatory actions of the investigator can be divided into two stages: preparation before departure to a location of the experiment and directly on a location of the corresponding detective actions. Besides, preparation of experiment demands some organizational actions.

Basic elements of preparatory actions for realization of investigative experiment are: 1) definition of the purpose of investigative experiment; 2) studying of case papers; 3) definition of time, place and situation of investigative experiment; 4) preparation of scientific-technical, alarm and vehicle means as well as means of communication and fixation; 5) preparation of subjects, tools, means and material evidences; 6) definition of the content and sequence of experiments (investigative actions); 7) definition of procedural rules (definition of a circle of participants); 8) forecasting of research actions, results, and also modeling of final conclusions in the form of versions; 9) drawing up the written plan.

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CONCEPT OF PROFESSIONALISM OF WORKERS OF MILITIA AS A NECESSARY CONDITION FOR THEIR PROFESSIONAL ACTIVITY

The article is sanctified to the study of professionalism of workers of militia as a necessary condition for their professional activity. It is set that among the basic signs of professionalism of worker of militia except professional capabilities and abilities should also be noted professional sense of justice, professional culture and education. Certainly, professional sense of justice of workers of militia is the main instrument of their activity, which has the special terms, environment, facilities, and methods of formation. It is marked that speaking about formation of consciousness of man, it is expedient to examine it from positions of external and internal activity. The professional culture of militiaman is manifested in ability to envisage the results of the activity, in prognostication, in ability to recreate and expound national interests, see the prospect of their development. It is a degree of militiaman's knowledge, ways and methods of law-enforcement activity and their practical application. Education is certain knowledge and skills for a certain profession or speciality. It is noted, that the system of professional preparation is the constituent of education, which includes the basic organizational types of studies, that provide its continuity: initial preparation of workers accepted on service in Internal Affairs Agencies (schools of professional preparation of workers of militia, higher educational establishments of MIA of Ukraine); preparation in higher educational establishments of MIA of Ukraine; postgraduate education; training on probation. The author makes the conclusions that professionalism of worker of militia is characterized by the followings features: 1) it is one of major sides of professional activity; 2) it is a determinant factor of professional reliability, capabilities to carry out definite law-enforcement activity both in ordinary terms and in extreme, non-standard situations successfully and faultlessly; 3) it is stipulated by certain achievements in the process of labour activity, by the high level of formed professional and spiritual culture in all its perfections; 4) it is achieved as a result of realization of specific professional preparation of workers of militia. The workers of militia must promote their professionalism during all their work in Internal Affairs Agencies.

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ORGANIZATIONAL FORMS OF LEGAL ASSISTANCE BY ATTORNEY UNDER THE CURRENT LEGISLATION OF UKRAINE

The problem of implementation of advocacy exists in a variety of organizational forms, such as: individual activities, law office and bar association.

Analysis of the legislation indicates some of the problems that complicate the implementation of the law. Since the legislation of Ukraine considers law offices and lawyers' associations as parties to the agreement on legal assistance, determination of their status is crucial. The author conducts a study of different types of legal entities. However, any attorneys' and lawyers' association does not comply with the civil law.

The author concludes that law offices and bar associations are legal entities of private law because they create the constituent documents. Ukrainian legislation provides regulations for companies, institutions and other legal entities. However, none of the species can be applied to the attorneys' and lawyers' associations, institutions created by one or more persons who do not participate in management. The company may be entrepreneurial, which is not coordinated with the status of law firms and bar associations.

Given that, the law provides for the possibility of the existence of other types of legal entities. The author concludes that law firms and bar associations may be understood as specific types of legal entities. The legal status of such entities must be regulated by a special law, the Law of Ukraine "On Bar and Practice of Law".

Thus, after analysis on this issue, the author proposes to amend the Law of Ukraine "On Bar and Practice of Law" with the rules defining the legal status of law firms and bar associations. Legal regulation of individual advocacy author estimates as normal.

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METHODOLOGICAL BASES OF THE WORLD COMMUNITY FIGHT AGAINST INTELLECTUAL PIRACY AND COUNTERFEITING

This article is devoted to the methodological approaches to the fight against illegal trade of counterfeiting and piracy goods.

It is claimed that infringement of intellectual property has become the global problem which causes serious damage to the world economy and tends to be one of the modern international crime trends. The author analyses the documents of G8 summits from 2005 to 2009 containing the program that coordinates the international community's efforts in the fight against the production of pirated goods. The most significant issues of this program are the coordination of state strategies in the fight with crimes against intellectual property, dissemination of information about the results of piracy production's distribution among the civilian population and officials, support of developed countries in intellectual property's infringement, development of legislation, rules and procedures which help to refuse such phenomena as illegal trade of pirated goods.

G8 summit documents contain recommendations for strengthening customs cooperation and deepen the research of the Organisation for Economic Co-operation and Development (OECD) on the impact of trade in counterfeit products on the global economy. One of the most important statements is that promotion of the protection of intellectual property rights should be viewed as an investment that can bring tangible dividends in economic and social development.

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INTRODUCTION OF ELECTRONIC JUSTICE TO THE COURT SYSTEM

The article describes the basic principles and objectives of the computerization of judicial system of Ukraine on the basis of the existing legal framework. Information and communication technologies (ICT) allow increasing information interchange, the speed and volume of data to be processed in the courts, improve the quality of the judiciary, realize the rights of citizens to have free access to court information.

International experience of informatization of the judiciary has shown that during the last years electronic justice based on the use of ICT is introduced in different countries.

Electronic justice refers to the using of ICT in the implementation of justice, which includes electronic communication and data interchange, as well as accessing to information of a judicial nature. The main purpose of the introduction of electronic justice is to increase the efficiency of the judicial system and the quality of justice, improving the functioning of the judiciary.

The tasks of development and further improvement of the judicial system is the use of ICTs through the pilot project "Electronic court" ("E-court"). It is designed for automation of the process of judicial office, generalization of judicial practice, publication of judicial information for citizens and compliance with procedural deadlines. It is a combination of ICT, which allows maintaining the proceedings electronically. The basic principle of the implementation of this project is to organize the electronic information interchange between all participants of the judicial process, in order to ensure fair justice in Ukraine. The article considers the technologies of project that are used in the systems of legal procedures, such as: obtaining copies of all legal documents in electronic form, the exchange of electronic documents between all the participants of the judicial process, sending subpoenas via SMS messages.

The implementation of the project "E-court" will reduce the timing of court cases and improve access to justice through using electronic documents. It is helpful to ensure continuity of the judicial process and allow organizing a full cycle of the electronic document in the future. It also helps to reduce legal costs and manufacture of paper documents.

The further implementation of the projects reviewed is one of the ways to increase the efficiency of justice in Ukraine.

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LEGAL THANATOLOGY AS A NEW SCIENTIFIC DIRECTION

Problems of thanatology (Thanatos – Greek God of death) – the ancient science of death – have a special meaning in the field of law. Exactly from the standpoint of law it is necessary to solve many relevant problems of this old and at the same time new field of human knowledge. It is typical that the determination of the causes of death affects, for example, the characterization of a crime (forensic thanatology), civil procedure regulates the procedure of declaration of death, society actively discusses legal aspects of euthanasia, that is, the legalization of the right to easy and "dignified" death, the practice of abortion, determination of the legality of suicide, disposal of one's own body – realization of somatic rights. Therefore, these data should be considered in law.

Development of legal thanatology is intended to solve a number of the following problems:

– legal definition of death (updated) and its criteria;

– analysis of the current state of the "culture of death", which should be reflected in the legislation;

– improvement of the system of fixation and identification of the legal presumption of death;

– considering euthanasia as a form of withdrawal from life in the context of thanatological knowledge;

– the study of epistemological self-reflection right to die in the somatic rights, which contributes to a better definition of the limits of the implementation of this law;

– legal regulation of organ and tissue transplantation in the context of human thanatological knowledge;

– issue of abortion;

– determination of the place and role of forensic thanatology in the context of tanatological legal knowledge.

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ILLEGAL EXTRACTION OF MINERALS OF NATIONAL VALUE, COMMITTED REPEATEDLY

Complex analyses of replication features while committing illegal extraction of minerals of national value is conducted in the article, place and meaning of qualification feature "repeated" commitment is identified within part 3 of Article 240 of the Criminal Code of Ukraine, and also the meaning of the crime "illegal extraction of minerals of national value, committed repeatedly" is discovered.

According to results of this research, the author has established that under illegal extraction of minerals of national value, committed repeatedly one should understand personal or in conspiracy committing a finished or unfinished type of extraction of minerals of national value by a person who previously personally or in conspiracy has already committed a finished or unfinished type of extraction of minerals of national value (replication of identical crimes) or has violated established rules of subsoil protection or their exploitation (replication of uniform crimes) except situations when:

1) during different periods of time the same person has committed two or more facts of illegal extraction of minerals of national value and each one of them possesses all features of crime under section 2 of Article 240 of the Criminal Code of Ukraine, but all of them are the realization of the same criminal intent of the guilty person (continuing crime);

2) finished or unfinished type of illegal extraction of minerals of national value or violation of established rules of subsoil protection or their exploitation under the current criminal law are not crimes or do not involve criminal liability;

3) the person has previously committed crimes that fall under the features of one of the crimes described in sections 1 and 2 of Article 240 of the Criminal Code of Ukraine but: a) was found not guilty by the court under the brought charges; b) under the order established by law was acquitted; c) was found guilty without prescribing punishment or was excused from serving punishment; d) court has changed qualification of person's act into another article of the Special Part of the Criminal Code of Ukraine; e) criminal proceeding initially opened against a person under article 240 of the Criminal Code of Ukraine, was closed; f) person has served punishment for the act which delinquency and punishability are cancelled by law; g) was rehabilitated; h) criminal record for these crimes was extinguished or cancelled.

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FACTUAL ACKNOWLEDGEMENT OF HIS ERROR IN SENTENCING A CRIMINAL

The problem of sentencing for crimes in which the offender had made an acknowledgement of his error is almost unexplored in modern jurisprudence. However, the factual acknowledgement of his error, in our opinion, is a factor that has a significant effect on the punishment imposed by the court.

The issues of significance of factual acknowledgement of error were considered in publications of Z.G. Aliev, T.I. Bezrukova, Y.A. Vapsva, P.S. Dahel, A.A. Kochetkov, V.F. Kryvochenko, O.I. Rarog, M.B. Fatkulina and V.A. Yakushin.

The research of the importance of factual acknowledgement of an error for sentencing is the main objective of the article.

The problems that can arise in judicial practice of sentencing persons who made acknowledgement of error are described. There are considered the positions of outstanding Ukraininan and foreign scholars regarding this problem. The provisions of European countries criminal codes relating to sentencing for an attempt to commit a crime are analyzed. It is considered that most of the crimes in which the offender had made the acknowledgement of his error have to be qualified by the direction of intent as attempts. The author argues that cases where the crime is unfinished as a result of the crime with factual acknowledgement of an error can often be more socially dangerous than the fully completed crime. However, according to modern criminal legislation of Ukraine, the maximum punishment for the attempt can not exceed two-thirds of what is provided for the completed crime. This provision limits the possibility of the court to appoint a fair punishment.

The author concludes not full compliance of the provisions of the Criminal Code of Ukraine with the principle of justice and individualization of punishment. This is particularly evident when sentencing for a crime in which the actor had made a factual acknowledgement of his error.

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PENALTIES FOR INFECTING WITH HIV OR ANY OTHER INCURABLE CONTAGIOUS DISEASE

The article is devoted to the issue of imposing punishment on persons who committed a crime provided by Art. 130 of the Criminal Code of Ukraine. Despite the fact that, on the procedural point of view, it is difficult to conduct the preliminary investigation and to form the evidence base considering a crime provided by Art. 130 of the Criminal Code of Ukraine, it appears that in the consideration of such criminal case, courts release the subjects of the crime from serving punishment with probation.

There are only 5.0 % of the 150 analyzed criminal cases during 2007-2011 in Ukraine connected with conviction of those persons who have committed a crime provided by Art. 130 of the Criminal Code of Ukraine, and with assignment of punishment in the type of deprivation of freedom with its real serving. The generalization of judicial practice shows that the judge (court) takes into account the presence of HIV in the perpetrator as a circumstance that mitigates punishment and therefore, in most cases, uses the provisions of Art. 69 of the Criminal Code of Ukraine (assignment of more lenient punishment than provided by the law) or choose the minimum penalty provided in sanction for the crime, not arguing with that role of such decisions in this circumstance.

Due to the lack of appropriate conditions for serving punishment in the type of arrest, there is a proposal to eliminate the arrest as an alternative form of punishment from the sanction of Paragraph 1 of Art. 130 of the Criminal Code of Ukraine.

The author argues the thesis that the introduction in a sanction of Paragraph 1 of Art. 130 of the Criminal Code of Ukraine of alternative types of punishments as a fine and (or) correctional works, is inappropriate because the majority of such convicted persons who are carriers of the HIV or virus of other incurable infectious diseases that are dangerous to human life, are unemployed (with a difficult financial situation), repeatedly convicted, injecting drug users.

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PREVENTION OF ILLICIT TRAFFICKING OF SYNTHETIC CANNABINOIDS BY LAW ENFORCEMENT AGENCIES IN UKRAINE

Relevance of the article is determined by the growth in demand for drugs among users in Ukraine. Demand for psychoactive substances creates preconditions for continuous diversification of synthetic cannabimimetics. Imperfect legislation concerning control of new substances gives the latent period for temporary circulation of substances that fall under the ban.

The authors analyzed the conditions of effective influence of law enforcement bodies of Ukraine on the identification, detection, investigation and prevention of illicit trafficking of narcotic drugs, including synthetic cannabinoids. The analysis is based on a system of conceptually new scientific approaches, which determine fundamental changes in the organizational and legal framework of these bodies' functioning.

Noteworthy is scientific novelty of article, which appears in the fact that the author offers a number of law enforcement agencies conducting search, customs, judicial and administrative, financial and audit measures to combat the illicit trafficking of drugs, including synthetic cannabinoids.

The specified paper is a logically complete work that meets the criteria of the writings of this kind. The work is useful both for researchers and for practitioners of law enforcement, for Security Service of Ukraine and lawyers, and therefore can be recommended for publication.

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THE PROBLEM OF THE ADMISSIBILITY OF ANONYMOUS EVIDENCE IN CRIMINAL PROCEEDINGS

Recently, the practice court and investigating authorities are increasingly faced with cases provide anonymous testimony, that the testimony provided by stakeholders or witnesses under pseudonym, taken under protection with preservation of reliable information about their person. In the scientific literature on criminal procedure, criminalistics and operational activities mostly covered these issues in the context of security of participants in criminal proceedings and overcoming impeding the exercise of criminal proceedings by organized criminal groups. However, almost no scientific publications on issues of admissibility and procedural suitability of such evidence, because the problem of evaluation of evidence in criminal proceedings is one of the central problems of the theory of proof, which is of great practical and theoretical importance.

Of the opinion that in light of the impact that the testimony of anonymous witnesses have on the rights of the suspect (accused), their use should be established by law with clearly defined conditions which will ensure a balance between the need to ensure the safety of a person taken under protection, and the right of a suspect (accused) to a fair trial. We believe that at Plenum of the Supreme Court of Ukraine it is possible to introduce provisions on limitation based on inner conviction of judges, weight and evidential value of the testimony of a person who is involved in criminal proceedings under a pseudonym, if such evidence is not supported by other evidence.

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OBJECTIVE EVIDENCE OF THE ORGANIZED GROUP

Relevance of the research of chosen topic is determined by the fact that scientists and practitioners do not have a uniform idea on the content of the concept of organized group and features that form its content. As a result, the ambiguity of thought leads to different interpretation and application of the criminal law, especially since the organized group as a form of participation has not been the subject of a separate study by researchers after the adoption of the Criminal Code of Ukraine in 2001.

According to Art. 26 of the Criminal Code of Ukraine, objective evidence of complicity lies in the fact that several subjects jointly commit premeditated crime. According to this definition, it follows that the features of the concept are presence of several people – a quantitative trait, and their collaboration – a qualitative trait.

Identification of common features that are characteristic of organized group, allowed moving on to the actual analysis of the specific features of these groups. There are different approaches to their definition. The science of criminal law in Ukraine in general expresses similar approaches to their list and content, differences are focused on the level of specification, or, otherwise, combination of several features under one name. Due to the current edition of Part 3 of Art. 28 of the Criminal Code of Ukraine and clarifications undertaken by the Supreme Court of Ukraine, it is possible to identify the actual objective and subjective attributes of an organized group, and highlight the objective and subjective features.

Features of objective nature are divided for basic (mandatory) and additional (optional). The basic (mandatory) objective characteristic features include: 1) the number of participants; 2) community; 3) commitment of one or more crimes; 4) the existence of a group during certain period of time; 5) the presence of the organizer. Additional (optional) features include: 1) hierarchy; 2) the presence of weapons. Such an objective sign as sustainability is objective and subjective one.

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IMPROVING THE LEGISLATION ON CRIMINAL LIABILITY FOR SWINDLING COMMITTED BY MEANS OF ILLEGAL OPERATIONS USING ELECTRONIC COMPUTER TECHNOLOGY

On the definite stage of society development, any norm of law can seem unable to regulate new public relations. The analysis of criminal legislation and practice of its application by courts and law-enforcement bodies gave the author the opportunity to conclude, that further improvement of the norms of criminal legislation of Ukraine is necessary to ensure effective struggle against swindling committed by means of electronic computer technology and similar actions. Its improvement must reflect peculiarities of computer swindling of modern period, fix it in the commonly acknowledged terminology and give more detailed definition of public danger of these crimes.

Examining common swindling schemes committed by means of illegal operations using electronic computer technology, the author shows different approaches to the named criminal actions. The author pays special attention to the fact that the operation with electronic computer technology must be illegal, i.e. not comply with the legislation. However, in the cases analyzed in the article, the offender uses legal possibilities of the internet.

With the purpose of improving the legislation on criminal liability for swindling committed by means of illegal operations using electronic computer technology, the author proposes to use instead of "electronic computer technology" the term "computer system" and "telecommunication system", to introduce alternative sanctions of economic character for the indicated swindling, and to reduce imprisonment terms.

To the author's mind acts committed by means of illegal operations using electronic computer technology cover different formal elements of computer crimes stipulated in a separate section of the Criminal Code of Ukraine.

Thus, the author proposes to add the new elements of crimes to the Criminal Code of Ukraine: computer and telecommunication swindling, theft, committed by means of illegal operations using computer systems and telecommunication nets.

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ACTIVE PROCEDURAL OPINION OF AN EXPERT

Theoretical relevance of research issue is determined by the fact that in the scientific literature the active procedural opinion of expert in the implementation of the functions of the parties in the new Criminal Procedure Code of Ukraine has not been the subject of a separate study by scientists. The practical significance of this study lies in the fact that the determination of the content and possibility of feasibility of expert's own active procedural opinion will allow the parties of the criminal proceedings effectively use their capabilities during the investigation and prosecution of criminal offenses and solving tasks of preventing crime.

The purpose of this paper is determination of the content and possibility of feasibility of expert active procedural position in implementation of functions of the parties of criminal proceedings.

The problem aspects of realization of expert active procedural opinions are investigated in the implementation of functions of the parties in terms of adversary in criminal proceedings. The author analyzes the scientific literature on the following issues, considers views of leading scientists about the essence of participants' powers in the criminal process. The author analyzes the positions of the main participants in the criminal proceedings on the basis of their functions in criminal proceedings. The article emphasizes the reasonability of use of the category of management in the analysis of the procedural activity of the parties. The content of special knowledge during the forensic examination is revealed. The content of active procedural position is revealed. The content of active procedural position is: 1) relation to the proceeding, i.e. possibility of intervention or control of its process; 2) relation to the other participants of proceedings, i.e. possibility to control their actions; 3) adoption of significant procedural documents that implement managerial influence. It is proved that for efficiency of expert's participation in the implementation of procedural functions of the parties the expert active procedural opinion is required. Its fixation in the expert's right is initiated. It is stated that the basic content of active procedural opinion is proactive application of special knowledge. It is proved that the organizational form of the expert active opinion is an expert technology. It is recommended for the expert to show his own active procedural opinion on the stage of examination accompanying a trial.

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THE COOPERATION OF THE INVESTIGATOR WITH OTHER SUBJECTS OF SEARCH IN THE COURSE OF HIS SEARCH ACTIVITY

The paper discusses the definition of the cooperation of the investigator in the course of search activity with other subjects of search. The analysis of the views of scholars on this matter and applicable law identifies shortcomings in the work of the investigator during the cooperation with other subjects of search.

The author considers that the success of detection of criminal offence depends on the character and quality of cooperation of investigators and other subjects of search. Correctly organized cooperation usually gives a great effect for fight against crime. Therefore, a lot was done and is done nowadays to find a method of cooperation for optimal segregation of duties of bodies which fight against crime, concordance in planning and performance of public investigative (detective) actions, non-public investigative (detective) actions and operational activities of detection, investigation and prevention of criminal offenses. Nevertheless, the available system of cooperation is still not perfect because the practice reveals many defects and outstanding issues.

The above defines the necessity of further researches of cooperation in organization of investigation, in particular, search activity of investigator.

Considering the theses of scientists and practitioners, and the features of search activity of investigator, the author proposes the definition of cooperation of investigator with the subjects of search during search activity as a coordinated activity of investigator, workers of operative departments and other subjects which provide logical combination of the proceedings and investigation activities undertaken by each of them according to their functions and within their legal authorities using the specialized knowledge and technical means to achieve a common goal with the least cost and time capabilities. The cooperation should be purposeful, which is essential and necessary condition for successful investigative activity.

The author concludes that essential issues for effective cooperation of the investigator with the other subjects of investigation are the follows: common goals; general motivation for aim achievement; clearly determined and segregated objectives; agreed and coordinated performance of segregated and assembled individual actions of all participants; the necessity of management (including self-management) – the necessity which is internally essential for common activity (in this case investigator carries this function); the availability of single final result which is common for investigator and other subjects of search; a single spatio-temporal functioning of interaction participants; consideration of the past evidence of all interaction participants, activation of all skills and possibilities of the interaction subjects; trust and respect.

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HISTORICAL AND LEGAL ANALYSIS OF COUNTERMEASURES OF ILLICIT CULTIVATION OF NARCOTIC PLANTS

This article highlights standards and analyses historical and cultural aspects of combating illicit trafficking of narcotic drugs and areas of preventing and combating illicit cultivation of narcotic plants, which operates at the present stage of development of Ukrainian society.

Drugs consuming issue have been worrying society not the first century, as drug trafficking undermines not only the health as a social value, but also economical, cultural and defense capacity of a country.

Reviewing and analyzing historical and cultural aspects of combating illicit trafficking of drugs, including the cultivation of narcotic plants, is an important step in forming a common perception and evaluation of the current situation in the country at present to ensure the formation of effective measures to combat drug crime, which determines the relevance of the article.

Based on the analysis of anti-drug legislation during the Soviet state building, we can make a conclusion of a forwardness of a drug policy; moreover, forms and methods of control of narcotics are gradually improving.

Speaking of anti-drug legislation and areas of preventing and combating illicit cultivation of narcotic plants, which operate at the present stage of development of Ukrainian society, it should be noted that law provides: a coordinated mechanism of preventing and combating crimes related to drug trafficking; exchange of experience on forms and methods of interaction between law enforcement and government agencies to prevent illicit trafficking of narcotic drugs, psychotropic substances and precursors at the national and international level; control over subjects who carry out activities related to the legalization of drugs; consideration of the legal practice on combating illicit cultivation of narcotic plants.

Based on the analysis of national and international experience of legislation considering narcotic drugs, psychotropic substances and precursors, the author stresses the need to adhere to the chosen strategy of combination of preventive and punitive measures.

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