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THEORY AND HISTORY OF STATE AND LAW

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COURT AND JUSTICE AND THE USSR IN 1953-1964 YEARS

Ukraine, the proclamation of the independence of the process of a democratic, social and legal state. Significant among the problems associated with its building occupied by the problem of reforming the justice and supervisory bodies for which it is advisable to know the past. In Stalin's time as in the USSR and the RSFSR created a powerful repressive apparatus branched who has reprisals against invented enemies regime. Positive changes in social and political life were simply impossible without the restoration and strengthening of even basic foundations of law and order. Of particular importance was attached to the restoration of normal functioning of the judiciary. In the USSR and the Republic eliminated various extra-judicial institutions, as special counsel, «three» and so on. With the power republican justice and the court created the Presidium of the local courts, review of cases performed during the «great purges» canceled the CEC of the USSR, which were aimed at unlawfully investigation of limit protection. Paid due attention to personnel of the judiciary. Pivotal importance for the reconstruction of the judiciary was 1957, when in February 1957 at the sixth session of the Supreme Soviet of the USSR were amended Art. 104 Constitution of the USSR and adopted a new (third years of Soviet power) Terms of the Supreme Court of the USSR. The essence of the changes was primarily in the decentralization of the judiciary. Simultaneously held and updated guidance of the Supreme Court. The task of the new principles of justice and judicial system reform identified adopted in late 1958 Basic Laws on the Judiciary of the USSR and the Union and autonomous republics, and the Law on the Judiciary, the USSR from 30.06.1960 02.03.1959, the Central Committee and USSR Council of Ministers adopted decree «On the part of workers to the protection of public order in the country».

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LEGAL REGULATION OF THE CREATION AND DEVELOPMENT OF ELECTED SYSTEM OF LAW VERBAL COURTS IN THE LEGISLATION OF RUSSIAN EMPIRE IN XVIII – FIRST HALF OF XIX CENTURIES

When executing justice in imperial Russia of the «prereform» period a legislator considered verbal courts to be important in applying extrajudicial procedures and in reducing terms of proceedings. Legal regulation of creating and developing the system of electoral verbal courts in Russian Empire was aimed at increasing effectiveness of justice, and increasing the role of public management bodies founded by the state; at providing favorable conditions of economic activity and strengthening socio-political stability. First of all, verbal courts were to stimulate a civil flow in cities, to expand trade and economic relations and relations between Russian merchants and lower middle class. The Supreme power sought for unifying legislative and practical inclusion of traditional types of executing justice, pulling together organizing and regulating activity of the lowest judicial authorities.

Functions of verbal court for estates involved in public services (inhabitants of mining districts, Cossack armies) were mainly performed by bodies of administrative justice, however the population of Cossack armies which kept traditions of a common law, widely used the right of verbal trials. Special organizations of verbal courts were created for the state and imperial peasants. Consecutive integration was the prior principle of judicial and legal policy concerning native people of peripheral provinces. Variety of local and regional common law rules in verbal courts allowed the state courts to cope with steadily growing amount of office-work, marking the preliminary stage of formation of legal system of imperial Russia, the general norms and standards of legal culture of the population of its peripheral areas.

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FORMATION AND ACTIVITY OF UKRAINIAN LANDMILITIA

It is considered the social and political conditions for the emergence and functioning of Ukrainian and Ukrainian landmilitia line corps in this article. It was analyzed geopolitical prerequisites of Ukrainian construction line and the feasibility of establishing Ukrainian landmilitia corps, outlined the history of the emergence of military engineering art in the process of building lines Ukrainian, described the military-strategic importance of Ukrainian line.

The page of history of so-called «Ukrainian line» is rather understudied as a military fortification, military skill and formation of Ukrainian landmilitia corps. This page of history provoked little interest among scientists. There is no holistic studies, and a number of works allowed free interpretation of how the concept of «landmilitia» and Ukrainian landmilitia corps and discrepancies in the dates of creation and disbandment.

The need of research is caused by the fact that currently there are all sorts of views on this historic period. An excursion into the history of the national scientific opinion is important today, in conditions of uncertain and conflicting views on the division of the world and defining boundaries. That is why research of historical events are important for evaluating the effectiveness of management geopolitical development in a specific time interval, because of the reliability of the results depends, ultimately, the choice of historical trends and tools of managerial influence. The relevance of this theme is also evident in the historical role of cities – fortress as stronghold of Ukraine. The study of historical experience can be useful in solving of modern interstate and ethnic conflicts, would not allow to repeat the mistakes of the past, to develop ways of interaction and cooperation with neighbors.

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THE RULE OF LAW: PROBLEMS OF PERCEPTION IN PRESENT NATIONAL JURISPRUDENCE

The author of the article analyses the situation and shows the specifications of the rule of law concepts creation in present national jurisprudence.

Current status of ambiguity and contradiction of perception of the rule of law pending on existing of several approaches: traditionally soviet and formed in the frames of tradition of western liberal legal doctrine.

Vested in the Constitution of Ukraine clauses as to the rule of law determines requirement in definition of content of the principle of the rule of law from the position of legal positivism and explicitly normativism in its present interpretations («soft positivism»). The author shows insufficiency of such approach and assumes that doctrine definition of nature of the principle of the rule of law should be completed from the point of its valuable characteristics, namely: a) from the position of sociological approach, where its content and nature has specific character, because are determined taking into consideration specific-sociological context and b) from the position of philosophic-legal approach.

From the position of sociological approach identification of nature and content of the principle of the rule of law in socio-cultural aspect means that this principle should be considered as common social theory of the legal system of a society. Therefore, such approach is effective only among those communities where the law is a value in the cultural tradition, the idea of social progress. From the position of philosophic-legal approach to the perception of nature of law, the content of the rule of law, as the value, determines in the context of other valuable components of absolute law.

In the frame of present philosophy of law, perception of nature of the principle and its content, to a great extent, embodied from the position of axiological, anthropological, communicational approaches. However, the author proves the necessity of perception of nature of the principle of supremacy of law from the positions of gnoseological approach.

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THE TRIAL IN THE RUSSIAN LAW OF THE I HALF OF XVIII CENTURY

In the 20-ies of XVIII century Russia became an absolute monarchy. Formation of the absolutist state is associated with the name of Peter I, who was the first to embody the presence of autocracy in Russia.

The new form of government determinates a new legal system. From the early years of the reign of Peter I began his law-making activity, so soon it became necessary to hold on a new codification of laws. Attempts to create a new code, like traditional Russian law of Muscovy era, failed. Then the king went through codification of certain areas of the law that was entirely new for Russia. The monarch began with the work on codification of criminal and procedural law. In the new legal acts there were increased repressions by the state. Finally inquisitorial process was settled as the leading form of litigation. These processes, of course, affected the formation of the legal system of Ukrainian Hetman State, which could hardly resist the assimilation policy of the tsarist regime.

«Europeanization» of Russia, which took place during the first half of XVIII century, aggravated phenomena that existed in pre-Petrine day: bureaucracy, corruption, social corporatism. The reason was that the reforms were held «from upstairs», excluding the interests and aspirations of society and these reforms reinforced people's dependence on the state. The historical experience of a warning for today's Ukraine, who seeks the ways to integrate into the European community.

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THE ROLE OF LEGAL IDEOLOGY IN DEVELOPMENT OF SOCIAL AND LEGAL STATE IN UKRAINE

The content of the notion of social and legal state is characterized in the given clause. The social type of a state is defined as the most optimum model of social system organization. Taking into consideration the level of development of Ukraine on a modern stage it doesn't belong, at least now, to the social model of a state.

A state can be called legal if it is based on the supremacy of law, ideas of humanism, justice, legal equality and freedom, and when human rights are recognized as higher social value. A developed civic society where economic relations are founded on free market acting solely on a legal basis is determined, in author's opinion, by the main criterion of a legal state. That is to say, a legal state is such a democratic state where prevalence of law, equality before the law and independent court are ensured, where human rights and freedoms are guaranteed, and the principle of division (separation) of legislative, executive and judicial power takes as a basis.

Correspondingly, the present Ukraine can't be referred to the legal model of a state yet because of almost total incapability of our citizens to use their rights and ignorance of them.

The author gives and analyzes two models of interaction of a state and a civic society, namely «statecentrism» and «anthropocentrism». The role of legal ideology in this case is in the fact that it defines what model of interaction of a state and a civic society is realized in every specific occasion (this, in its turn, also determines the features of a civic society itself). It defines its especial importance for a state as well as for a civic society.

The researcher points out that determination of our country's role in these systems is not distinct since there are features of both models: state- centered is reflected in functioning of monopoly on state apparatus power, difficulties for average Ukrainians to protect their interests in courts etc.; human-centered is reflected through the increasing of power of social security institutions (Law of Ukraine «About appeals of citizens», wider publicity of power etc.)

The role of legal ideology in the process of development of a social and legal state in Ukraine consists in suggesting values, reference points and components of legal culture in the public consciousness. As a result legal ideology is not only a complex arrangement (system) of various legal ideas, values and principles but also an instrument of influence on public legal consciousness, which is able to guarantee its recognition by citizens and further realization of the stated ideas and values.

Correspondingly, due to legal ideology values and ideas become a part of reality or at least tend to it. Legal ideology has its impact on effectiveness of interaction between the state and civil society.

The liberal (neoliberal) doctrine which provides for the development of socially, materially and spiritually independent personalities who are able to protect their interests through legal means is the main legal ideological doctrine which is able to guarantee formation and development of a social and legal state.

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SUBJECTS OF THE LAW ENFORCEMENT ACTIVITY: FEATURES OF LEGAL STATUS

General theoretical description of the nature and legal status of subjects of law enforcement activity primarily involves the study of essence within the limits of jurisprudence, that from the standpoint of the theory of law.

In accordance with that position about the properties the phenomenon, we can point to a number of features of the category «subject of law enforcement activity». In particular, the mandatory during the definition of this category will be a sign: the subject of law enforcement activity is a person endowed with state and authority on the application of the law. It is important to sign the subject of law enforcement activity, which is demonstrating that he acts administrators' social phenomena and processes. Another sign of the studied category need to be defined as: law enforcement activity is a subject that is endowed with special legal status.

After analyzing the features of subject of law enforcement activity, determine that a subject of law enforcement activity is a person who takes on professional principles for the management of the utility function has a special legal status, provides state-government activity to official legal character and aims at implementing law through the publication of enforcement regulations – documents containing the prescribed authority subject mandatory personalized legal requirements addressed to a specific subject.

It is noted that examining features of the legal status of subjects of law enforcement activities should be taken as a basis the fundamental principle that the legal status of the above entities is a special modification of the legal status regarding the constitutional status of a citizen, and this leads to consideration of at least two important circumstances. First, the legal status of subjects of law enforcement activity should not be considered outside the context of the constitutional status of human and citizen as well as the content and volume of his fundamental rights, freedoms, duties stipulated by the Constitution of Ukraine, which are the basis of a special legal status any members of social relations, including subjects of enforcement activity. During the same simulation of the legal status of these subjects indicated circumstance has paramount importance, as is sometimes proposed design

of the latter in the form of an exception to the general constitutional status of citizen is unlikely to be correct, given the place and role of the Constitution of Ukraine in resolving of public relations. Secondly, the features of enforcement activity those category of subjects of that are holding positions in the state apparatus and carrying out state law enforcement administration which is associated with the implementation of public authority, can not give rise to the structure and features of the elements of the legal status of most subjects of use law.

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INTERACTION OF MODERN LEGAL SYSTEMS OF THE WORLD IN TERMS OF THE GLOBALIZATION

Globalization is a rather complex and multifaceted process that brings fundamental changes in the functioning of the legal space. In view of these basic tendencies of modern legal systems is their convergence, mixed, likening regulation under the influence of international legal standarts. Growing interdependence of states of the modern world, which is manifested in ambiguous and contradictory phenomenon of globalization, is recognized as one of the general laws of development of international relations. Therefore, it can be argued that the subjects of international relations have common interests, which can be realized only jointly.

An important trend of globalization in the legal field is growing role and significance of the rules and principles of international law. This does not indicate blurring of lines between international and internal law countries. It is about sanctioned by the national legislation expanding spheres of social relations that fall under the regulation of international law and about the growth not only the authority but also the formal legal force of international law in different legal systems of the world.

Processes of globalization greatly influenced the development of modern legal systems of the world, causing their transformation, changing of the infrastructure of law. The most striking effect of globalization is traced in the continental and common law – within the Roman-Germanic and Anglo-Saxon legal systems and in between them. There are all reasons to state that a convergence of continental and common law systems because of intervention of the law and legal culture in the scope of the common law and the increasing role of judicial activity and case-law in continental law. Thanks to the mutual enrichment of law in modern legal systems of the world, there are signs of community, a new uniformity, consistency. By common trends in the Romano-Germanic and Anglo-Saxon legal systems include increasing the number and the role of international agree-

ments; unification regulation under the influence of international standards. The most crucial manifestations of globalization in the legal sphere are – the convergence of legal systems of the world, the growing role of international law, a qualitative transformation of the law-making process within states.

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CREATION OF COUNTY ZEMSTVA'S ACTS IN THE SPHERE OF ANTIEPIDEMIC STRUGGLE IN UKRAINIAN PROVINCES (THE SECOND HALF OF THE XIXTH – THE BEGINNING OF THE XXTH CENTURY)

County zemstva was one of the most important parts of the system of local self-government in Russian Empire (including Ukrainian provinces) in the second half of the XIXth – the beginning of the XXth century. They had a lot of functions and particularly the function of creation of regulatory acts. In the XIXth – the beginning of the XXth century epidemics were took place in the territory of Russian Empire. Therefore one of the spheres where zemstva created regulatory acts was the sphere of antiepidemic struggle.

Legal regulatory acts issued by zemstva were devoted to the antiepidemic measures directed against such infectious diseases as plague, cholera, smallpox, diphtheria, typhoid fever and epidemic typhus etc. Zemsta's resolutions and orders regulated rules of behavior during epidemical incidents. Rules of disinfection, procedures of food preservation and sale in the case of epidemic were worked out by county zemstva in detail.

Zemstva also regulated organization of medical staff work including assignment of provinces' medical officer and financing of antiepidemic measures. Each county had to have one medical officer. This medical officer was given substantial warranties concerning maintenance of the proper sanitary condition.

The important role in the struggle against epidemics played county congresses of physicians, assembled by county zemstva. During such congresses representatives of local self-government and medical staff solved different theoretical and practical questions involving prevention and overcoming epidemics.

Unfortunately, bodies of imperial executive authority (governors, Ministry of internal affairs of Russian Impire etc.) suspected zemstva of revolutionary activity and hampered implementation of zemstva's antiepidemic acts or even abrogated them.

The analysis of county zemstva's acts indicates that considerable part

of them was devoted to antiepidemic and medical prosperity of county population. This experience may be actual in conditions of administrative and medical reform in the context of increasing local self-government competence in the sphere of antiepidemic struggle.

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MODERN UKRAINIAN HISTORIOGRAPHY OF THE INSTITUTE OF CRIME IN LITHUANIAN-RUSSIAN LAW

In a flow last 20 years effort of scientists was filled with a significant number of gaps in our knowledge about the domestic state system and right. Ukrainian researchers was filled actively study the collected array of scientific information requires comprehension and generalization.

Active research of institutes of right in the Lithuanian – Russian state is conducted in Kiev. Modern historians and lawyers work above the problems of the medieval domestic state system and law/ Among scientific revisions should be noted works of I. Usenko, in which was given general description of the Great Lithuanian Duchy [23]. T. Bondarchuk summarized the looks of scientists XIX century on the state and right, including criminal law [6]. N. Yakovenko rotined the role of public elite in forming of the system of right and also its role in law [33].

Modern Lvov scientific school continues the study of medieval right. I. Boyko generalized the basic theoretical concept of institute of crime, analazed the types of crimes, conducted base research of right, the organs of power and management on Ukrainian earths [4, 5].

The contribution to research of the Lithuanian – Russian criminal and legal institutes is carried out by the Odessa school of sciences which founded and headed by P. Muzechenko. He also was the author of the textbook on history of state and texts of the statutes of the Great Lithuanian Duchy and also a tutorial «Court and judicial system in Ukrainian lands XIV-XVI centuries» [21, 22].

This work is aimed at the generalization of revisions of Ukrainian scientists in the field of the Institute of crime of the Lithuanian Duchy Despite the large number of works donated aspects of development and functioning of the Institute of crime in the Lithuanian – Russian law, it should be noted, that the majority of them considers crimes in the context of the study of other issues of a legal. Social and state development of the Great Lithuanian Duchy.

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SOVIET HISTORIOGRAPHY OF THE ISSUE OF SALE OF REAL PROPERTY UNDER THE LAW OF THE RUSSIAN EMPIRE IN THE LATE XVIII – EARLY XX CENTURY

Soviet scientists who studied the problem of the purchase and sale of land were focused primarily on socio-economic aspects of the issue. They were concentrated mainly on the study of class struggle and social situation of the peasantry and other classes. Scientists widely used, processed and analyzed statistical materials on the formation and functioning of the land market in the Russian Empire and in particular on its Ukrainian lands. In the most fundamental scientific works along with traditional methods of Soviet historical science applied kliometrycal method (in soviet historical science it was applied for the first time by Ivan Kovalchenko); this method gave more authenticity to claims and led to more objective and reasonable conclusions. Scientific achievements of Soviet scientists are helping to reconstruct an overall picture of functioning of the purchase and sale of land. But beyond the scientific interest of Soviet researchers 20's – late 80's of the twentieth century remained issues of sale of other real estate.

Special monographs devoted to the legal regulation of the purchase and sale of land, as well as other real estate, in the Soviet period wasn't conducted. Few works which related pre-revolution civil law, including ownership of real property, treated it as the «bourgeois» one.

The issue of sale of immovable property under Russian law the late XVIII – early XX century requires further study.

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LEGAL REGULATION OF SOCIAL SECURITY FOR WORKERS IN GERMANY IN THE LATE NINETEENTH CENTURY

Reforming Social Security wage workers is conducted in three main areas: 1) temporary disability (illness); 2) accidents; 3) old age and disability. The first piece of legislation, which June 15, 1883 received legislative sanction of the German Reichstag, and on December 1, 1884 came into force, was the law on

health insurance. Compulsory insurance was subject to workers and employees, comprehensive income which does not exceed two thousand marks a year. The introduction of this type in life insurance relied on health insurance. To the minimum guarantee payments, allowed by law belonged: free medical care (outpatient and inpatient care, delivery of drugs) from the first day of illness; temporary disability benefits in the size of half the average earnings during 26 weeks, beginning from the fourth day of illness; assistance at birth in the size of half the salary during six weeks; assistance for funeral in the amount of twenty-average earnings. Overall, at the end of the nineteenth century compulsory state insurance against diseases in Germany had reached nearly 10 million people, representing 18% of the total population.

Another social risk, provided by the system of state insurance in Germany in the late nineteenth century was occupational accidents in manufacturing. The final sanction of the legislative regulation received 5 June 1884 and entered into force on 1 October 1885. Except industry, the law extended its effects on agriculture, forestry and shipping. Accident insurance in Germany was based on the principle of centralization – by organizing large business associations on an industry basis. Insurance was carried out solely on the costs of entrepreneurs. The maximum pension of the victim was not exceed 2/3 of his salary. In case of death of the worker through an accident, family members had the right to a pension, which was no more than 60% of its annual income. As for 1901 accident insurance covered 17 million employees, to ensure which industries have spent almost 90 million marks.

The final piece of legislation passed by the German Reichstag on June 22, 1889 as part of the social labor legislation was a law which introduced compulsory insurance against disability and old age. The provisions of the law in Germany were introduced with effect from 1 January 1891. The subject of insurance was disability stood at least 2/3 or the age of 70. For receiving minimum annual disability pension, the amount of which, depended on the class, ranged from 116 to 150 marks, the insured had to pay at least 200 weekly contributions. A necessary condition for receiving a full old-age pension was a pay premium for 24 years. In 1900 the average old-age pension was 145 marks a year. Overall, at the beginning of the twentieth century, insurance disability and old age more than 10 million people were covered.

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A DOGMA OF LAW IS IN THE CONTEXT OF LEGAL ACTIVITY

Reasoning from activity approach legal activity can be defined as active attitude of subject toward the system world, as a method of subject's social connection and legal reality to the effect that is conditioning it successful development. Thus it follows to pay attention that the legal activity is more broad definition, than legal practice so as foresees other structure of subjects' activity. Basic directions of the use of dogma of law and dogmatic technique in legal activity are analysed in the article. It proved that activity is a method of existence of dogma of law, source of filling of legal sphere of dogmatic and definition. Legal relations, legal consciousness, law as valued-normative system and dogma of law can not exist out of limits of activity. The dogma of law through activity is incarnated in reality so as in the legal actions of man. The different states and components of dogma of law are respond the different types and forms of legal activity. The dogma of law in the context of activity appears structured agreeably to the features of separate type of legal reality.

Reasoning from legal activity it is possible to trace the use of methodology of this activity in the context of the use of dogma of law. Such methodology can be named dogmatic technique because the article of research becomes dogmatic.

It is suggested to pick out such spheres of the use of dogma of law as: legislative, judicial and scientific. There will be realized the different elements of dogmatic technique. In the first sphere a dogma of law is used in legal activity by enlisted scientists analysis of legal life and lead through of empiric researches. A dogma of law is expressed in strict interpretation (of the law) in judicial activity. Scientific legal activity includes for itself the dogma of law as methodological basis for legally technical to the analysis of legislation and system of legal acts.

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THE THEORETICAL BASIS OF THE PRINCIPLE OF LEGAL CERTAINTY

Principle of legal certainty is a general principle of law. It takes origin from the Ancient Greece and Rome. Legal certainty in the theoretical aspect is a set of requirements for the organization and functioning of the legal system in order to ensure a stable personal legal status by improving the process of law-making and enforcement. It is a generally recognized democratic value that is part of European common heritage. European Court of Human Right is having great influence on the legal certainty formation. Ukraine is on the process of reforming its legislation according European standards. Legal certainty principle has formal and structural requirements. Formal requirements substance is that specific restrictions on rights must be provided for a specific legal act, it must be public and officially recognized. Structural requirements are: clear formulation of norms, generality of the law, predictable policy and legitimate public interest, clear division of powers and responsibilities and the uniqueness and predictability of enforcement that implies restrictions. Therefore, Ukraine had done a great step for legal certainty implementation. Ukrainian legislator and judiciary have a number of positive effects of legal certainty practical usage. The main role in this sphere plays Constitutional Court of Ukraine that permanently practically uses principle of legal certainty.

CONSTITUTIONAL AND MUNICIPAL LAW

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MODERN CONCEPTS OF CONSTITUTIONALISM

The article is devoted to the systematization of scientific approaches to understanding the essence of constitutionalism and analysis of key concepts that form the doctrinal foundation of modern models of constitutionalism.

In the constitutional law doctrine three main concepts of constitutionalism (formal, material and institutional) have been emerged. They laid the foundations for the existence of appropriate models of constitutionalism – American, British and European. The essence of the formal concept of constitutionalism is to recognize the key role of the Constitution as the fundamental law of the state, endowed with the characteristics of the rule and stability. The formal concept of constitutionalism exists in three movements – formal-regulatory (was distributed in the United States late 18th – early 19th century, nowadays exists in socialist countries), formal -teleological (inherent in the current political and legal practice in the United States and a number of other countries) and formal-valuable (inherent in some post-Soviet states).

Material concept of the constitutionalism formed on the ideas of liberalism, is based on the political and legal practice of The United Kingdom with unwritten constitution, where constitutionalism is considered as limited government and identified with the rule of law. It`s based on the powerful interpretative and supervisory powers of the courts seen as a means of legal power's limiting.

The institutional concept of constitutionalism emerged from the political and legal practice of continental Europe to limit state discretion and comes from the ideas of limited government and democracy. According to it, constitutionalism is seen through the prism of institutional mechanisms that are used to limit the government in a democracy. The institutional concept contains the teleological component, the aim of constitutionalism is considered to be a building of democratic limited government.

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THE VALUE OF THE CONSTITUTIONAL PROVIDING OF FREEDOM OF CREATIVITY AND THE RIGHT ON THE RESULTS OF CREATIVE ACTIVITY IN THE CONDITIONS OF INFORMATION SOCIETY

The article deals with the constitutional freedom of creativity and the right on the results of creative activity in the information society, where knowledge, intellectual and creative potential of human activity are the main social values and determine the path for the future development of humanity. The author shows the importance of creative activities for the development of a modern economy and social relations, and underline the need for constitutional ensure the right to the results of creative activity.

The right on the results of creative activity belongs to the cultural human rights. It is closely associated with the freedom of creativity as an element of the constitutional system of rights and freedoms.

The freedom of artistic activity include as a main structure elements the choosing to engage to creative activity or not, the choosing the kind of activity, the right to control the results of creative activity, the right for government's support of creative activity, the right to defense the freedom of creative activity and their results. The constitutional warranty of the freedom of creative work mean the elaboration of condition to apply such freedom, first of all, by the constitutional establishment of the law's protection of intellectual property. The principle of the freedom of creation becomes the leading principle of the copyright which acts as leading forms its implementation.

The constitutional freedom of creativity is the task of the state to encourage creativity by promises more effective legal protection. This protection is designed to provide authors the means of existence and contribute to the development of culture and progress through the wide dissemination of creative achievements.

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CONSTITUTIONAL COMPLAINT AS AN INSTRUMENT REALIZATION OF NATURAL HUMAN RIGHTS IN UKRAINE ON COURT PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

The article is devoted to the judicial protection of the natural human rights in modern society. It is shown the general stages of formation, development, improvement of the phenomenon and its social value. Reveals the value and feature a natural human right to judicial protection. The existing legal mechanism for judicial protection of fundamental rights and freedoms in Ukraine and shows a number of shortcomings in this regard. The ways of improvement of the institution through the introduction of the national legal system of constitutional complaint.

The author highlights that since the inception of the state sharply raised the question of the need for the implementation of legal institutions and mechanisms to protect the rights and freedoms of pressure from the authorities. History shows the development of society and why the court has become the institution to which was assigned to carry out the functions of protection of natural rights. At the same time reveals the need for providing a real opportunity to implement individual access to the courts for protection of their rights and freedoms.

To do this, gives examples on the historical experience of mankind that reveals the need for the need to develop and implement specific legal instruments, which then translate using effective mechanisms. By analyzing the mechanism of judicial protection of fundamental rights and freedoms, showing that this process has evolved along with legal consciousness and culture of the individual. Along with the construction of a democratic regime was to strengthen the guarantees of judicial protection of fundamental rights and freedoms. Since the state was done fixing such rights in a legal act. The state declared its duty to provide her hand all the necessary conditions for the establishment of human rights and its responsibility in the event of non-observance of obligations.

So since the collapse of the Soviet Union and the proclamation of the independence of Ukraine, at the same time there have been changes in the form of government of the country. Ukraine in fact was proclaimed democracy. Since that time, saw the creation of new democratic institutions and legal mechanisms for the protection of fundamental rights and freedoms. With confidence we can say that this process is still ongoing, as Ukraine seeks to be a legal state where human rights are not only declared, but are provided with appropriate legal mechanisms.

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CONSTITUTIONAL AND LEGAL CATEGORY OF PROTECTION AND PROTECTION OF POLITICAL RIGHTS TO ELECT AND BE ELECTED

The article analyzes the problem of determining the categories of protection and protection of citizens electoral rights. Special vector is the analysis of the will of citizens as one of the foundations of the constitutional system. Reveals the natural character of the political rights and freedoms, which stems from the fact that the bearer of sovereignty and the only source of power in Ukraine is its people. It is proved that the identification of law enforcement, human rights and those that are provided with the right relations leads to confusion, as security, protection, security, realization of rights, which ultimately reduces the efciency scientific and practical importance of the research of individual scholars and leads to an incorrect evaluation of these terms, at the level of law-making and law enforcement. Grounded the position that political parties are created to political activities, who participate in election campaigns and brought directly to the decision of the state problems. It is noted that a political party influences the body which takes the decision on the protection of citizens electoral rights. Noted that if the political party is a parliamentary, that is possible adoption of security standards by Parliament in respect of citizens electoral rights. Set the value and relevance of the constitutional and legal category of protection and protection of the electoral rights of Ukrainian citizens. Investigate public law, which establishes and regulates relations in civil society. Found properties of the activity of the court in the protection of public rights and consideration of cases arising from public relations. The paper argues that the court must make decisions, which requires implementation of the principles of the separation of powers, independence of the court and its subordination only to the law.

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STAGES OF CONSIDERATION QUESTIONS CONCERNED WITH UKRAINIAN CITIZENSHIP

The article deals with stages of examination the issues concerned with the Ukrainian citizenship. Approaches to the definition of stage number of legal case in the theory of legal process, Criminal and Procedural Law, Civil process, Administrative Law. Approaches to the definition of stages number of legal case are established. The author's definition of the stage of legal case examination notion is given.

It is determined by the author that stages of regarding questions concerned with Ukrainian citizenship are closely connected by common tasks and unity of principles.

Particular stage differs from the others by concrete targets which should be solved at this stage, certain circle of participants, peculiarity of procedural relations, forms and total decisions taken. Solution of the task at each stage is drawn up as a special procedural document which in a way sums up an activity.

After taking such act the new stage starts. Stages are fundamentally linked: as a rule, the next one starts only after the previous one is completed.

What had been made earlier and new procedural actions till the moment of completion of proceedings is checked at the new stage.

The attention is paid to the content of each stage concerning the change of Ukrainian citizenship. It is ascertained that the process of acquisition or ceasing of nationality consists of seven stages.

When making detailed analysis of stages of questions examinations we can ascertain that not all of them take place during the examination of cases concerning citizenship.

On the basis of this criterion the principal and additional stages of examination of questions concerned with Ukrainian citizenship are distinguished.

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CONSTITUTIONAL AND LEGAL DEFINITION OF RIGHT TO ACCESS TO PUBLIC INFORMATION

The right of access to information is a constitutional human right provided and guaranteed by the Constitution of Ukraine. Which states that everyone has the right to freely collect, store, use and disseminate information orally, in writing or otherwise – of their choice. These rights may be restricted by law in the interests of national security, territorial integrity or public order, the prevention of disorder or crime, for the protection of health, protection of the reputation or rights of people to prevent the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. In addition, every citizen has the right to government authorities, local authorities, institutions and organizations with information about yourself, which is not a state or other secret protected by law. Constitution of Ukraine guarantees the right of free access to information on the environment, the quality of food and consumer goods, the right to know their rights and responsibilities, laws and other legal acts that determine the rights and duties of citizens shall be brought to known population. 13 January 2011, the adoption of the Law of Ukraine «On access to public information» was introduced a notion of the right of access to public information, it is the legal definition of innovation national law and consequently requires more theoretical and research for proper application in practice government bodies and local authorities to ensure the legitimate rights and interests of citizens.

The meaning is revealed by identifying its main features. As the meaning of the term is a necessary, essential features of an object, then define the concept – then figure out the essential features of the subject. The definition answers the question that is the subject matter, and at the same time limiting subject to all other adjacent objects. Then there is necessary a more detailed and wider study of the constitutional right of access to public information and you must formulate and reveal the meaning of the constitutional right of access to public information.

ADMINISTRATIVE, FINANCIAL, TAX LAW

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APPEAL OF HIGHER JUDGES' QUALIFICATION COMMISSION OF UKRAINE RESOLUTIONS: LEGAL REGULATION AND COURT RULINGS PROBLEMS

In this article we consider current law enforcement problems, arising in the course of Higher Judges' Qualification Commission of Ukraine resolutions appeal. The attention is mostly focused on hearing such cases by the Higher Administrative Court of Ukraine.

Statistics of people's applications to the Higher Judges' Qualification Commission of Ukraine is analyzed. Then, the number of appeals to the Higher Administrative Court of Ukraine is revealed. As a result of the first part of the article, we assume that only 2% plaintiff's claims to the Higher Administrative Court of Ukraine are satisfied. In our opinion, it proves that hearings of such cases are highly prejudicial.

Law on Judges and Judicial System of Ukraine provisions are examined. We summarize that according to this Law, neither private person, nor an entity is entitled to appeal the Higher Judges' Qualification Commission of Ukraine resolutions.

The next part of the article is devoted to the problem of Higher Administrative Court of Ukraine rulings review. According to the Code of Administrative Court Procedure review is not provided at all, because the Higher Administrative Court is the highest court in administrative jurisdiction.

As a conclusion, we assume that legal regulation and court rulings bring to the naught the possibility of Higher Judges' Qualification Commission of Ukraine resolutions appeal.

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ON GENESIS OF UNDERSTANDING OF TAX OBLIGATION LEGAL NATURE

The purpose of this article is to analyze different approaches to the legal qualification of legal relation arising out of the tax legal relations between the individual and the state. Based on the analysis of two key approaches and relevant sources, the author highlights proper relation in terms of the legal category of financial and legal obligation, its exposure in modern financial relations, its structure and elements.

As per the author financial and legal obligations mean public legal relations between the state and territorial community (either directly or on behalf of the competent authorities or officials) on the one part, and legal entities and individuals (collective and individual entities) on the other part that occur, vary and terminate in the process of mobilization, allocation, distribution and use of financial instruments (which are the content of public funds) and its related objects (bank secret, confidential information, etc.), and provided in relation and interdependence of rights and obligations of each party and is ensured by legal remedies. This category reflects legal relationship between the taxpayer and the state in tax relations under modern terms.

The author analyzes features of financial and legal obligations, and concludes that in the tax relations an authorized state authority that represents public interest, peculiar to the financial law in general is the one party of financial obligation. Taxpayer or its representative (e.g. tax agent) is the other. Thus the ratio of the rights and obligations of taxpayers and the state on behalf of the tax authorities is the criterion, specifying not only the legal status of the payer himself, but also the freedom and openness of entrepreneurship in the country as a whole. This is the resolution of disagreements between different approaches to the modern understanding of the legal nature of tax debt that some scientists consider as a unilateral unconditional obligation of the taxpayer before the state, and others as a result of a certain social contract.

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WORLD BANKING SYSTEM AND NEW STRATEGIC AREAS OF BANKING SUPERVISION AND REGULATION FOR BASEL STANDARDS

The article is devoted to the impact of the global banking system to the new tough Basel standards and national reform of banking supervision in Ukraine. It was nalyzed the banking system of Ukraine, which is inextricably linked to the globalization of the financial services world, and therefore the national reform of financial regulation and supervision must meet the international requirements. Also, the article explores the implementation of the new Basel capital standards.

The global financial crisis of 2007 -2009 years was acutely raised the question about the causes of the increasing instability of the global economic system in general and about the viability of the financial system in its present form, particularly since it has become the epicenter of the current crisis.

Considering the crisis trends in the world of finance, the question of forming a reliable and efficient banking system, this is a key institution for the sta-

bility of economic development. The most important part of the infrastructure of the world market, are particularly relevant. In addition, it should be borne in mind that the interdependence of the economies of various countries along with the removal of legal restrictions on the admission of foreign capital in domestic banking market, are a powerful factor in the expansion of international banking. In turn, the international banking business, being one of the most important results of the process of economic globalization, he has significant and the increased influence in this process.

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SERVICE OF REVENUE AND DUTIES AS SUBJECTS OF REALIZATION OF STATE CUSTOMS

The central body of the Executive power, which provides implementation of State policy in the sphere of State Customs, is the Ministry of revenue and fees, which is the legal successor of the State Customs Service of Ukraine. The main tasks of the Ministry of revenue and fees in the sphere of State Customs are:

1) the formation of the State policy in the sphere of State Customs;

2) realization of the State policy in the sphere of State Customs;

3) ensuring the protection of the economic interests of Ukraine Kiev interregional customs are customs who performs within its area of competence, the State Customs deal and provides comprehensive control over the observance of legislation on civil customs.

Customs in its activity is guided by the Constitution of Ukraine, the customs code of Ukraine, the disciplinary statute of the customs service of Ukraine, other laws of Ukraine, acts of the President of Ukraine, Cabinet of Ministers, the decision, normative-legal acts on the issues of the State Customs and Regulations signed by the Chief Customs Office and approved by the Ministry of revenue and fees. customs regulations about structural subdivisions of as well as the job descriptions of employees approved by the Chief Customs Office on the basis of sample provisions and instructions developed by the Ministry of revenue and fees. Creation, reorganization and liquidation of customs are carried out in accordance with the legislation of Ukraine. Structure, limit the number of staff, painted and customs estimates are approved by the Minister. Areas of customs are defined:

1) Kyiv City;

2) the customs territory of Ukraine of customs control and customs clearance of goods that moved by pipeline transport and electricity transmission lines and assigned to the competence of the interregional customs;

3) the territory of Kyiv region in part of customs control and customs clear-

ance of goods that move in international mail and express shipments;

4) territory of the customs warehouse and warehouse of temporary storage LLC 'Vidi Terminal' located in Vyshneve Kyiv region.

Customs post is the customs authority, which included the customs as a detached structural subdivision and in the area of its activity, provides the tasks entrusted to the customs service of Ukraine. Provisions on customs posts are approved by the heads of the respective Customs.

Creation, reorganization and liquidation of customs posts are the central body of the Executive power, which provides implementation of State policy in the sphere of Customs Affairs, on the proposal of the respective Customs. To carry out specific tasks entrusted to the customs service of Ukraine, there are specialized customs authorities, organizations, educational institutions and scientific-research institution of customs.

Classification of customs authorities to them includes:

1) Department of customs infrastructure and international cooperation;

2) motor transport customs economy;

3) Customs Department information technology and statistics;

4) Central Customs management laboratory research and expert work;

5) Department of combating smuggling and customs offenses;

6) Center for professional development, retraining workers and kinology;

7) State Scientific-Research Institute of customs;

8) of the Customs Department of audit, analysis, and risk management.

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ABOUT THE IMPACT OF MANAGEMENT ACTIVITIES ON PUBLIC FUNDING OF ENVIRONMENTAL PROTECTION MEASURES

The use of a new management system as a part of modern management practice is considered appropriate for successful implementation of national target-oriented programs, which practice, according to the experience of developed countries, makes it possible to coordinate and integrate efforts at a higher professional level.

In practice the planning process has a number of serious flaws which affect funding of target-oriented environmental programs. The use of correct management practices is of particular importance for the full and timely funding of target-oriented environmental programs. We believe that management decisions will be effective if statistical methods are applied at all stages of management activities.

In European countries, Deming cycles are applied to assess the shortcomings of

the previous practice, and the conclusions are used to improve further practice. Unfortunately, in Ukraine, these cycles are incomplete: the stage of verification associated with the official reporting on the results of the program or funding of specific activities is usually ignored.

Development of new methods of management involving a complex integrated system of diverse environmental measures, as well as formation of comprehensive national mechanism of its regulation are the fundamental objectives of public management.

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THE CURRENT STATE BUDGET RELATIONS IN UKRAINE

The scope of the emergence and development budget is fiscal relations activities of the state and its administrative units. Development of financial and legal science and practice of the budget legislation causes strengthening of emphasis towards modernization, standardization, improving the efficiency of legal regulation and social direction of fiscal activity. However, the questions are updated scientific principles of fiscal performance and prospects of its further development is impossible without examining the legal aspects of this activity and, consequently, improve its regulation.

The budget is the result of the legal regulation of social power (economic) relations, as reflected in the provision of this relationship legal form. It should be noted that it is in the public activities of any individual act (distribution of funds between the various links of the budget system, the use of budget allocations) can be carried out solely on the basis of a legal act. Scientists see it as an indissoluble unity of material and legal sides of intergovernmental relations.

Today there are many unresolved theoretical and practical issues in the field of budgetary relations, which to some extent affect the effectiveness of fiscal work. The existence of these problems directly related to the lack of budget is developed theory of relations. Therefore, in modern terms a comprehensive study in this area becomes important that will identify and resolve existing problems, and suggest areas for further improvement of legal regulation of intergovernmental relations. Today there are many definitions of «fiscal relationship» , whose analysis gives reason to conclude that they summarize the characteristics to some extent reveal their identity.

These definitions, depending on the purpose of research, scientists are formulated differently. In summary consideration scientists can propose a definition of budgetary relations.

Budgetary relationship – is regulated by rules of public relations budget law arising in the preparation, review, enactment of the budget or the decision of the local

budget, enrollment, allocation and transfer of budget funds, providing fiscal accountability, preparation, review and approval of reports on the execution of or decisions on the budget, budgetary control and responsibility for the violation of the budget law.

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PROBLEMS OF ADMINISTRATIVE AND TORTUOUS LEGAL PROCEEDINGS AND WAYS OF THEIR SOLVING

Problems of administrative and tortuous legal proceedings conditioned the imperfection of legislative regulation procedure of handling cases on administrative offenses. In terms of legal process conditioned the absence of this procedure. Administrative Code of Ukraine unifies the order of handling cases by all administrative and jurisdictional authorities without considering the specifics of the trial, which is based on principles, substantially differ from the principles of the public management activities.

ECHR case-law shows that the concept «criminal charge» has an autonomous meaning which is independent of the classification on the national legal systems where certain offenses can be defined as administrative or disciplinary, but be the subject of an autonomous concept «criminal» offense within the meaning of the Convention.

Administrative offenses referred to Ukrainian court jurisdiction are criminal in the sense of Art. 6 of the Convention, and thus the order of their adjudication should be comparable to the procedure of the proceedings in a criminal trial. At least the procedural rights of the person, who is the subject on the case concerning an administrative offense, should comply in terms of the rights accused in criminal proceedings.

Thus, the optimal solution to the problems associated with the adjudication of administrative offenses is the elimination of administrative and tortuous proceedings as a form of justice. Administrative offenses, cases of which at that time under the jurisdiction of the judges of local general courts, should access to the field of criminal justice, where this conditioned the public danger degree of the respective acts, the rest should be humanized and referred to the jurisdiction of the government, which administrative and tortuous activity will remain under the control of the administrative courts.

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GUARANTEE OF PRIVATE PARTNER IN THE IMPLEMENTATION OF PUBLIC-PRIVATE PARTNERSHIP

This article is devoted to the private partner guarantees implementing the public-private partnerships.

The views of lawyers at the definition of «legal guarantees» have been analysed. It was determined that the guarantees of the public-private partnerships can be understood as a system of interrelated legal and institutional ways and means that ensure the proper recognition, realization of the rights and obligations of public-private partnerships and legal protection.

Analysis of the Law of Ukraine «On Public- Private Partnership» and subordinate legal acts in this area leads to the conclusion of imperfect legislation. It was specified that the legislation in the field of public-private partnerships, especially those relating to the definition of conditions for the implementation of projects under this cooperation should be stated as specific as possible. For example, judgments regarding the settlement of disputes between undertakings and public authorities, necessity of improvement of legislation concerning the protection of the rights of the private partner.

It was decided that in order to improve business entities in implementing public-private partnership it is necessary: first, to secure mechanism for implementing safeguards private partner in the Law of Ukraine «On Public -Private Partnerships», and secondly,to clarify the regulations in Article 20 of the Act listed above in relation to exclusion from the reservation in respect of tax, currency and customs legislation and legislation on licensing and thirdly, the existing imperfections in the legal regulation of public- private partnership it effective judicial protection of the rights and interests of its members and the liability of the state is the main guarantees the obligations of public-private partnerships.

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ABOUT THE CONCEPT OF CULTURAL VALUES AS OBJECT OF CIVIL RIGHTS

The article is devoted researching of concept of cultural values as an object of civil rights.

Author analyses current Ukrainian legislation, including the Civil code of Ukraine and some special laws that regulating the motion of cultural values, and that contain the definition of concept «Cultural values».

Author paid attention, that the Ukrainian legislator side by side uses a concept «Cultural heritage» with a concept «Cultural values», and also uses some another categories that is sometimes consider as identical to the concept «Cultural values», «Cultural values».

Separate positions of international acts, which regulating motion of cultural values, and also their guard, are investigate by author. Paid attention, that, usually, the question is about authentication of cultural values by creation of their specific list in that they form certain group, which depending on the form of external expression.

On the basis of the conducted analysis of present not numerous scientific literature author make a conclusion that where is no unity in the decision of concept of cultural values. Mainly researches were made by the Russian scientists, some of that occupied to the civil – law aspects of cultural values and separate objects of cultural inheritance.

Author makes a conclusion, that the uses of concept «cultural values», allows to include and those objects of civil rights that is created today, and cannot be considered a «inheritance» in an own value, as acquire such value for next generations.

As a result of the investigation author makes conclusion about the dedicated legal mode of cultural values, that is related to the necessity their selection from general mass of objects of civil right. At the same time its presence in a civil legal relationship affects on specificity content of legal relationship.

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THE CONCEPT AND ESSENCE OF ADMINISTRATIVE-LEGAL MECHANISM OF RELATIONS REGULATING IN THE SPHERE OF WEIGHT TRANSPORTATION BY AUTOMOBILE TRANSPORT

Regulation of the transport activity relates to the priorities of domestic policy in Ukraine since the creation of right incentives for the development of the transport system is a major reserve welfare society and its economic potential under the directions of the state which are enshrined in the Constitution of Ukraine.

It is advisable to consider object administrative-law regulation separate branches of social life, transport in general, road transport and freight traffic as the sphere of road transport sub-sectors that are regulated by the rules of administrative law. Consequently, transport of goods by road serving the specific object of administrative regulation, which is crucial for the development of transport and the economy as a whole and forming of socially-oriented state.

In our point of wiev, the administrative-law regulation in the sphere of weight transportation by automobile transport – is purposeful impact of the state on public relations in the organization and execution of weight transport by automobile transport, the boundaries and essence which are caused by branch character and which is lies to organize of effective operation of companies that provide services to transport cargo in domestic and international traffic.

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LEGAL REGIME OF TAX SECRECY

The article «Legal regime of tax secrecy» gives a definition of tax confidentiality is determines by its place among other information restricted under the laws of Ukraine and the Russian Federation. The article analyses the scope of information constituting tax secret, and their holders and users. In addition, identifies gaps in the regulation of tax confidentiality and proposes concrete solutions.

The aim of this article is an analysis of the existing rules governing the tax secret in Ukraine and the Russian Federation, and suggest ways to improve them.

As a result of research the analysis of norms of the Russian and Ukrainian law about a tax secret, was conducted. It turned out that in the Russian legislation these norms are contained in the Tax code of Russian Federation. But there are some difficulties to use them in practice, therefore there is a subject to perfection. In particular, in this article it is suggested to make alteration in an item 102 of Tax code of Russian Federation, because the certain norms didn't take into account the tax agents as the subjects of tax relations.

As for the Ukrainian legislation, it is suggested on the whole to bring in the article in the Tax code of Ukraine about a tax secret, because certain norms about this type of confidential information in the current legislation of Ukraine are not present.

CIVIL AND ECONOMIC LAW AND PROCEEDING

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GUARD OF THE INHERITED PROPERTY BY THE PERFORMER OF TESTAMENT (ACTUAL QUESTIONS)

The scientific article is devoted to the actual questions of guard of the inherited property, in particular by the performer of testament.

Author analyses of current legislation, notarial and judicial practice, scientific literature in relation to the guard of the inherited property, subjects, having a right to put a question about introduction of guard of the inherited property, to application of certain measures on the guard of inheritance.

Author paid attention, that different concepts of guard of the inherited property are presented in literature. The circle of subjects is analyses, which having a right to initiate introduction of measures on the guard of property, and also plenary powers that get to the performer of testament for his guard. In legislation there are no absence which fixing limits plenary powers of performer of testament therefore author analyses positions of scientists about this aspect of question. Paid attention that a legislator also does not decide a question about terms on that the guard of the inherited property can be entered.

Author offers his own decision of guard of the inherited property, as a complex of legal and technical events that accept the interested persons or at their direction the permitted assignee is a performer of testament with the purpose of providing of guard of property and inheritance in the order set by a law.

Author set his own position about high efficiency of actions of performer of testament in case of necessity of acceptance of measures is grounded on the guard of the inherited property, and also necessity for populaces this figure in a professional environment.

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NOTARY SECRECY AS ONE OF IMPORTANT COMPONENT OF A NOTARY'S ACTIVITY

One of the goals of modern Ukrainian jurisprudence, rulemaking and enforcement practice, which are connected with consolidation of the new democratic principles and the creation of a genuine rule of law in Ukraine is a real security and protection of the rights and freedoms of man and citizen according to the prin-

ciple of equality before the law and court. According to this principle it is supposed freedom and security for some categories of citizens, taking into account the conditions and the nature of the special inter-governmental and social functions. Mentioned citizens are given equal freedom with others people and protection, as well as additional guarantees against unlawful encroachments of individuals and even of the state to create the conditions necessary for the performance of their duties. An important place among these additional guarantees belongs to the observance of the notary secret.

The duty to keep secrecy of notarial acts is the foundation of a notary's activity and prevents the possibility of occurrence of adverse effects in the case of disclosure of secrets. In this regard, it is important to fill the gaps in the legal issues of the notary secret.

Thus, the realization of the principle of keeping secrecy of notarial among other things allows showing the practical effectiveness of notaries as public-law institution. And this effectiveness is largely depends from the existence of independent, developed notary, and its complete effective functioning.

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LEGAL ASPECTS CONCERNING THE CEASING OF AGENTS OF ECONOMICAL ACTIVITY OF GENERAL INVESTING

The current demand of the modern management in the sphere of economical activity of general investing is the problem solving connected with the ceasing of such an activity.

To the problem of legal regulation of economical activity of general investing are devoted home and foreign scientists' works – lawers and economists, such as: O.O. Ashurkova, S.O. Birukova, E.V. Bobrova, V.M. Butuzova, O.M. Vinnuk, O.V. Haragonycha, S.M. Hrudnytska, Yu.M. Zhornokuia, V.V. Kudriavtseva, V.V. Laptieva, V.K. Mamutova, M.B. Maschenko, D.A. Leonova, A.A. Peresady, O.P. Podtserkovnyi, V.V. Poiedynok, V.Yu. Polataia, V.V. Rieznikova, V.S. Scherbyny, O.M. Yuldasheva and others.

In fact the problems of legal regulations of the ceasing of agents of economical activity of general investing haven't found the clear reflection both on the level of legislative act and on the level of legal doctrines that have led to the present discussions and representations of effective norms of economical legislation, and also its practical training. The analyses of the current legislation and its practical usage focus on the necessity of more precise legislative regulation in the above mentioned issues.

The aim of this article is to revile the peculiarities of the ceasing of agents of economical activity of general investing.

Great theoretical and practical value of the investigated problem is the differ-

entiation of the notion of the ceasing of agents of economical activity of general investing from the other adjacent ones. Due to this one of the most questionable matters in the sphere of economical right as well as in practical application of economical legislation is the correlation of the notion «the ceasing of economical activity of general investing» and «the ceasing of agents of economical activity of general investing». The analyses of the legislation and the generalization of the scientific results allows to point out that the notions «the ceasing of economical activity of general investing» and «the ceasing of agents of economical activity of general investing» cannot be identical.

Since the 1st of January 2014 will have come into force the new law of Ukraine «On the institutions of general investing», due to which the agents of economical activity of general investing will be deprived of the possibility to accumulate the assets of general investing institutions by means of reorganization of corporative or share funds through the union and joining, as a result their opportunities to take part in large projects will be limited. Referring to this, it would be appropriate to move some amendments to the new law of Ukraine «On the institutions of general investing», in accordance with which, the possibilities of the reorganization of ICI in the way of merging and joining should be foreseen.

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CONSIDERATION OF CREDITORS' REQUIREMENTS IN THE REORGANIZATION AND LIQUIDATION OF LEGAL ENTITIES

Protection of the rights and ensure the consideration of creditors of a business partnership that is terminated, is one of the most important tasks of regulation and guarantee the stability of the economic public order.

Important guarantee of keeping right for human contractors have a duty to disclose the termination of the legal entity that relies on a commission to terminate the legal entity or court. Thus, it was after the publication of notice of the decision to terminate the legal entity begins to run for a period of declaration of creditors' claims, which cannot be less than two or more than six months (Part 5 Art. 105 CC). The consequences of omitted creditors of the installed period for declaration requirements established only for liquidation proceedings, so that the creditor's claim, filed after the expiry of the time limit fixed by the liquidation committee for their production, are satisfied from the assets of the legal entity liquidate remaining after satisfaction of creditors claimed time (Part 4 Art. 112 CC). Claims of creditors made under specified procedures

and recognized by the liquidation commission or tribunal to be satisfied in the order specified by law. In the event of termination effective company claims its creditors are satisfied in the order of priority established by the Civil Code of Ukraine, and if found bankrupt company – in order of priority established by the Law of Ukraine «On restoring the debtor's solvency or bankruptcy». The schedule of payments with creditors in the event of termination of business companies directly related to the form of such termination.

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EXPERTISE ISSUE: DISTINCTIVE TRADEMARK

The presented article covers the matter of descriptive trademarks, particularly we emphasize on the means of its recognition, in what way does it acquire secondary meaning, which involves long-term usage and gain of reputation of well-known mark; the role of public opinion concerning the distinctive features of the sign. Furthermore, it is stated that in order to make a complete expertise on the subject, it is important to take into account two main aspects, such as the definition of each word that comprises a mark and perception of public either a sign itself or a source of its origin.

On the basis of the Judgment given by the Court of European Union illustrated in the article, we revealed the way to examine and compare intrinsic features of the product and the sign, obtained for it. Finally, the conclusion we came to is that the legislator has no intent to give exclusive right to the holder of the trademark to use a word or a combination of words that are a common characteristic for this product. In this rate competitors are suppressed in use this word or combination in advertising of own products.

LABOUR LAW; LAW OF WELFARE SECURITY

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THEORETICAL AND LEGAL STUDY OF SOME PECULIARITIES OF RESOLVING LABOUR DISPUTES IN COURT

Constitutional recognition of the norm according to which human beings, their life and health, honour and dignity, inviolability and security are the highest social value with human rights and freedoms determining the essence and orientation of the activity of the State (article 3) calls forth the need to establish a human rights mechanism guaranteeing and securing the protection of the right to work, as securing the realization of social and economic human rights calls for everyday attention of the State and for protection in case of their infringement.

Ukraine is moving along a thorny path of establishing a system of protection of the right to work as its labour legislation has been passed and amended in different historical periods, which is hardly compatible with legal practice. It is obvious that time has come for thorough analysis of the national legal tradition and foreign experience of realization of protection of the right to work and for working out theoretical basis and practical recommendations that concern creating a new system of labour dispute resolution in Ukraine taking into consideration challenges of the modern world.

The article presents theoretical study of some peculiarities of resolving labour disputes in court. Specifically, the author dwells on pre-trial court procedure and speculates on the possibilities of incoprorating mediation procedure in the framework of judicial resolution of labour disputes. The author believes that pre-trial procedure, being a procedural form of preparation of cases concerning labour relations, should by all means include pre-trial court session and presuppose court judicial mediation for cases provided by the legislation.

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THE LEGAL REGULATION OF A SOCIAL WELFARE OF THE CLERGY

Pension benefits clergy depends on where the person was employed. By clergy, religious organizations shall be assessed on obligatory state pension insurance in the amount of 36.76 % of the sum of the actual costs of their salaries, which include expenses for payment of principal and additional salary and other incentive and compensation payments. It should also be noted that the activities of religious organizations belong to one class of economic activities on the production of professional risk classes.

Another thing, if the priest in religious organizations does not have employee status. However, such a person may participate in the system of private pension provision. This is – part of accumulation pension provision, which is based on the principles of voluntary participation of individuals and legal entities, except as provided by law, in the formation of pension savings in order to obtain private pension participants to provide additional compulsory state pension insurance pension payments. If the priest does not have insurance and labor, reached the age of 63 years old, then, according to the legislation of Ukraine.

Priests are entitled to unemployment insurance, accident or occupational disease, in the case of temporary disability only if religious organizations, their enterprises and institutions, and in the cases provided by law, and employees of these organizations, enterprises, institutions pay insurance premiums Fund of obligatory state social insurance of Ukraine against unemployment, social insurance against industrial accidents and occupational diseases in Ukraine, the Social Security Fund for temporary disability. For example, in Ukraine the clergy pension system is carried out in solidarity. However, there is a problem on pensions clergymen, who is not with religious organizations in labor relations. For such persons, there is a system of private pension provision, the above example is the pension fund « Veil», and shall be subject to state social assistance.

Conclusions. Thus, social security clergy Ukraine compared with foreign clergy is low. No single piece of legislation that would regulate this issue. Therefore, we propose to adopt a separate regulatory – legal act which would be codified and regulated welfare clergy.

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CONCEPTUAL FOUNDATIONS OF THE DOCTRINE ON THE SUBJECT OF SOCIAL SECURITY

The process of formation and development of areas of law based primarily on the need to highlight distinguishing features that allow you to ascertain the existence of an independent branch of law. The main controversial issue on the subject of social security law is the problem of determining the precise definition of the relationships that are the subject of this area of law. Thorough analysis of the theoretical aspects of the subject of social security law is reflected in the writings of scientists, lawyers V.S. Andreev, V.M. Andriyiva, V.A. Acharkana, K.S. Batyhina, N.B. Bolotina, K. Husova, I.V. Gushchina, A.D. Zaykin, M.L. Zakharov, R.I. Ivanova, L.I. Lazor, A.M. Lushnikov, N.V. Lushnikova, A.E. Machulskoyi, M.I. Polupanova, S.M. Prilipko, M.S. Sahipova, V.A. Tarasova, E.G. Tuchkova, M.N. Shumylo et al. But with the development of social relations gradually, the conditions for the transformation of the legal system, taking into account current realities. So the question the subject of social security law remains a controversial and important doctrine in the industry. An important issue in this regard is the question of a clear definition of the relationships that are the subject field of law. In the doctrine of social security law is well-established position on the classification of the subject of social security law relationship with social insurance (public, private), public pensions, provision of social services and social assistance (insurance, government), procedural and procedural relations that arise in connection with the protection of their right to social security. Based on this, the subject of social security law should be viewed as a complex concept that consists of a set of relations and which is transformed according to the socio- economic strategy of the state policy in the field of social security. Therefore, we believe that the subject of social security law – a security and social relations, and other derivatives Relations to implement constitutional law in the State to protect and support the occurrence of difficult life circumstances (disability, unemployment, low income, etc.).

LAND, AGRARIAN, ECOLOGICAL, NATURE RESOURCES LAW

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THE CONCEPT OF «LAND CIRCULATION» IN THE LEGISLATION AND LEGAL DOCTRINE OF UKRAINE

The article is devoted to the theoretical study of the land turnover legal nature. The attempt is made to identify its difference from adjacent concepts, to describe their substance, to verify the correctness of their application

Actuality research due to significant changes in the legal system of Ukraine and its adaptation to the new social, political and economic conditions as it is today. The social significance of selected research problems due to the fact that Ukraine is an agricultural country. Therefore, regulation of land relations requires the most detailed study to find new ways to improve the functioning of the existing system of circulation of land and bring it into line with current realities and needs.

In conclusion, I point that the implementation of a complete system of circulation of land and its effective state regulation in Ukraine will ensure the realization of the right of ownership and use of land and the creation of an enabling economic environment society.

Providing of land circulation requires a clear understanding of its key terms. Analysis of the literature and legislation has shown that there is no common understanding of the land circulation. In a result of research shows that the land circulation is common complex concept covering all forms of transfer of ownership of land and describes the entire system of circulation of land resources.

CRIMINAL LAW, CRIMINOLOGY, CRIMINAL-EXECUTIVE LAW

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TARGET OF ILLEGAL PLACEMENT TO MENTAL HEALTH ESTABLISHMENTS

Illegal placement to mental health establishments is among offences liability for which is stipulated by Chapter III «Crimes against freedom, honor and dignity of a person» of Special part of the Criminal Code of Ukraine (article 151).

This crime is extremely rare in court practice but its social danger shall not be underestimated. It is known that in the Soviet Union forceful hospitalization to special mental health clinics was used to fight with political dissidents. Nowadays, illegal placement to mental health establishments is used to unlawful acquisition of real estate and elimination of «unnecessary» people. This crime is characterized by high latency because of opacity of psychiatric establishments and imperfection of legal constructions of this crime's body.

In this article the author basing on study of criminal law literature researches on specific features of an actual target of illegal placement to mental health establishments.

The summary is made that freedom of a person as a main actual target of illegal placement to mental health institutions shall be understood not only as freedom of movement but also as freedom to select circle of communication, freedom to make volitional decisions, make choice and independently decide whether to go to a mental health establishment. This shall also include freedom from external psychical pressure aimed at changing behavior of a person. Physical freedom of a person is as it is demonstrated only one of aspects (elements), though the most important, of freedom as a wide category.

Illegal placement to mental health establishments inflicts sufferings undoubtedly not only to freedom of a person but also to his/her honor and dignity. Such a person is not only deprived of a constitutional right to freely select his/her place of residence, right to make decisions, select circle of communication but also feels deep physical and moral sufferings. Under illegal hospitalization of a person to a mental health establishment human dignity suffers; this is due to peculiarity of a place itself, bitter moral sufferings (in particular, because of enforced co-residence with real mentally ill patients), «reason» of being there (deliberately wrong diagnosis), awareness of own helplessness and hopelessness, uncertainty of future. Human honor also suffers as a result of such crimes. It is known that in the society there is a biased and even negative attitude towards persons who underwent treatment in mental health establishments. Former patients experience difficulties in restoring an image of a normal person, in employment and in communication with other people. Therefore, in our opinion, there are all preconditions to assert that main actual target of the researched crime is freedom, honor and dignity of a person in their combination.

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BLANKET REFERENCE AS A FORM OF INTER-BRANCH LINKAGE OF CRIMINAL LAW

The article is devoted to research of blanket reference as one of the primary forms of inter-branch linkage by construction of criminal law.

Complexity of blanket reference method fosters different comprehension of the notion «blanket disposition» (or a norm), and the absence of the unified criteria of their definition. However, despite the numerous points of view concerning this issue, the present scientific ideas in respect to the criteria of considering these norms as the blanket ones, it is proposed to divide them in several groups. To the first group, it is necessary to classify those scholars who consider as blanket norms only those norms which disposition presupposes liability for breach of some special rules (traffic, protection of labour). To the second group refer those scientists who consider as blanket ones those norms which comprise the disposition with formal indicators, namely the following words and collocations: «legislation», «law», «duty», «illegal», «prohibited» etc. This method of definition of blanket norms by the «indicating words» was introduced by N.V. Belyayeva. The third group might include the scientists who consider as blanket ones those norms besides the aforementioned two categories that operate the terms which content is impossible to define without referring to the provisions of the other branches, to describe separate features of corpus delicti.

Various scientific opinions concerning the form of reference in the disposition of a criminal norm to provisions of other branches of law are pointed out: direct and indirect (hidden, latent). The author concludes that blanket features might be comprised in any part of the criminal norm structure: in a hypothesis, disposition or sanction. To researcher's mind, opposite to another way of fixing of inter-branch linkage – application of the terms of other branches, the primary feature of blanket reference is compulsory reference to provisions of the other branches of law for particularization of the content of a criminal norm.

The opinion that those criminal norms are blanket ones are based on the following:

1) they prescribe responsibility for breach of some special rules; 2) they contain «formal indicators», the words and collocations that indicate a breach of provisions the regulating legislation, namely: «legislation», «law», «duty», «illegal», «prohibited», «unlawful», «without special permission», «without state registration» etc. 3) they comprise one or several features that cannot be explored without reference to the norms of other branches of law.

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FALSIFICATION OF MEDICINES AND CIRCULATION OF SOPHISTICATED MEDICINES: CORPUS DELICTI

The article analyses the objective and subjective elements of crime under Art. 321-1 of the Criminal Code of Ukraine, advantages and disadvantages of a specified criminal law.

Amendments to Certain Legislative Acts of Ukraine concerning prevent falsification of medicinal products dated 08.09.2011 was introduced criminal penalties for manufacture and falsification of medicines.

Nowadays in Ukraine is a quite small practice of criminal cases for falsification of medicines. Employees of the preliminary investigation are in direct contact with the specified criminal law and they are noting several major problems.

First of all, there is no specific definition of the special subject of crime because in practice the criminal offenses under Art. 321-1 of the Criminal Code of Ukraine are committed by people with medical education. Special subjects appropriate to make qualifying element of the crime. For second, the legislator does not define serious consequences that exclude the correct application of criminal liability for falsification of medicines.

Investigators are need to develop special methods of investigation of falsification of medicines for the full and high-quality criminal process.

It can be concluded that the criminal law under Art. 321-1 of the Criminal Code of Ukraine is very progressive, covering public relations, which until 2011 were regulated at the level of administrative responsibility. At this stage it is important to develop a theoretical basis for the practical use for correct classification and qualitative investigation of the crime.

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CRIMINOLOGICAL ANALYSIS OF THE PERSONALITY OF ALCOHOL ADDICTED

This article is devoted to the analysis of the criminological significant features of people suffering from alcohol addiction. Their social and demographic, moral and psychological symptoms having possible criminogenic meaning are

characterized. The prevalence of older age group (36-60 years) with intensifying tendency of rejuvenation of alcoholism is revealed in the structure of alcohol addicted. The male share in the structure of alcohol addicted is 86 , 5% and female is , respectively – 13.5 %, which is generally correspond to a similar rate in the overall crime rate in Ukraine. By the results of a survey of 450 narcologists and testing 2480 individuals who are on the records in connection with the use of alcoholic drinks (1520 persons with a dependence syndrome; 860 persons with cancellation of delirium, psychotic disorders; 960 persons with amnesic syndrome, residual and remote psychotic disorders) additional arguments in favor of criminological typology of alcohol addicted persons are presented and passive, active and anxious types are allocated. It is found out that majority of alcohol addicted are characterized by egocentrism, social disorganization (expressed in addictive conditioned exaggerated attitude to personal needs, perception of their incommensurability with the problems of others and, therefore, centering attention and activity on them), infantilism (implies with a lack of interest to public events, family life), psychological alienation (expressed in stopping emotional contacts with family members and persons of immediate household environment, activation of psychological mechanisms of narcissism burdened with condemned attitude to alcohol abuse by relatives, friends and others), and disorders of memory, intelligence, reduced volitional qualities. Criminogenic meaning of the stated personal features is indicated.

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PRINCIPLES AND GENERAL BASICS OF PUNISHMENT'S IMPOSITION

The prerequisite for punishment's imposition is a commitment of a criminal offense by a person (felony or misdemeanor), directly prescribed by the law on criminal liability.

The imposition of punishment is one of the steps of its realization. The purpose of this step lies within individualization of certain punishment as to the person who has committed a criminal offence (felony or misdemeanor) whose guilt has been proved in a legal way.

The imposition of punishment has the following features:

- it is preceded by a commitment of a criminal offense by a person;
- the guilt of offender is completely proved in a legal order;
- the right legal estimation of the criminal offence is established by a court verdict of guilty;
- a court shall rightly impose a type and amount of punishment to the offender.

The article 65 of the Criminal Code of Ukraine determines the general basics of imposition of punishment. According to its provisions a court shall impose a punishment:

- within the limits prescribed by a sanction of that article of the Special Part of the Criminal Code, which creates liability for the committed criminal offense;
- pursuant to provisions of the General Part of the Criminal Code;
- having regard to the degree of gravity of the committed offense, character of the guilty person, method and motives of the committed offense, nature and extend of damages, and circumstances mitigating or aggravating the punishment.

It can highlight the following principles of the imposition of punishment:

- legality;
- determination of a type and amount of punishment in a court verdict of guilty;
- propriety;
- humanity;
- individualization;
- reasonableness.

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CRIMINAL LAW PROTECTION OF LIFE-TIME DONATION OF HUMAN ORGANS AND TISSUES

Including the article 143 under the name «Violation of the organs and tissues transplantation set order» is counter crimes in organs or tissues transplantation. Transplantation practice development leads to increased demand for donor organs and causes the major problem today – the lack of donor material. Therefore there is the need of maximum legal protection of donor's life and health which eliminated or at least reduced the possibility criminal violations and attacks on human life and health. Concerning the donor i.e. person from whom the organ its part is removed for transplantation to recipient, there are following violations of the legal procedure for transplantation:

1. Acts that violate the provisions of the legislation with respect to the individuals who cannot be donors, that is the taking of organs or tissues: a) under the legal age; b) legally incompetent; c) are not married to the recipient and are not his relatives; d) suffering from serious mental disorders or diseases that can be transmitted to the recipient, or injure health; e) contained in penitentiaries with respect; f) who has been previously transplanted such organs or tissues.

2. Acts that violate the requirements of the law with respect to anatomical materials that are not allowed to transplant from the donor, that are: a) unpaired organs; b) the whole body instead of its parts.

3. Acts that violate the requirements of the law regarding with respect to advisability of donation and avoid undue harm to donor – taking donor`s organ or tissue with causing more harm than the

harm the occurrence of which threatened the recipient.

4. Acts that violate the requirements of the law with respect to the procedure of the donation: a) without a corresponding information of the potential donor, b) without his consent, and c) despite the donors refusal from the previously consent.

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FORMATION OF POLICY MEASURES OF CORRECTION AND PREVENTION OF JUVENILE CRIMINAL BEHAVIOR: THE INTERNATIONAL EXPERIENCE

In the process of socialization of the child occupies an important place motivation positive behavior according to the norms and values prevailing in society. To a large extent contribute to this program of preventive measures and preventive nature, systematically applied in the social institutions of society.

Ukrainian criminal justice system for juveniles needs improvement program activities correction socially dangerous behavior, prevent and combat juvenile delinquency.

Therefore, it is helpful to study and implementation of international experience in this field.

Analyzing foreign programs can be divided into preventive early intervention program aimed at the development of certain essential skills, behavioral communication with parents, peers, teachers (Fast Track, Program Child and Parent Support, Project Towards No Drug Abuse, Linking the Interests of Family and Teachers) and programs that aim at eliminating negative effects cease the wrongful conduct and the formation of a socially acceptable relationship to society (Life Skills Training (LST) Youth at Risk Development Program, Olweus Bullying Prevention Program).

Also within articles were examined national programs in Poland and Lithuania. Polish National Program «Prevention of social exclusion and crime among children and young people» is a system of integrated measures to prevent socially unacceptable development. Lithuanian national program «National Program on Prevention and Control of Crime» aims to achieve strategic and tactical goals for preventing juvenile delinquency and creating opportunities for positive socialization of the child.

Thus, prevention programs should take into account systematic and comprehensive measures in the field: health, educational, cultural, civic participation and governance. Also programs aimed at addressing: economic, investment, legal and public policy.

Detailed research and theoretical analysis of long-term intervention programs leads to the conclusion that the process of improvement of the national system of response is useful to use international experience in the field of protection, child rearing and shaping her lawful behavior through involvement in various programs. Development in Ukraine general social and specific, targeted intervention programs lasting and implement them in the activities of local government and administration, educational institutions, NGOs contribute to the stabilization of the crime situation and reduce juvenile crime in the country.

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APPLICATION OF MEASURES UNDER CRIMINAL LAW FOR LEGAL PERSONS: THEORETICAL ASPECTS

Based on the analysis of the Law of Ukraine on 23.05.2013, № 314-VII «On Amendments to some Legislative Acts of Ukraine on the implementation of the Action Plan for the liberalization of EU visa regime for Ukraine on the liability of legal persons» some drawbacks of legislative regulation of norms that promote observance of the requirements of individualization measures under criminal law for legal persons in their application are revealed and suggestions to address them are formed.

It is noted that as the application of measures under criminal law to legal persons should be understood the activities of of the court for the adoption of and fixing in the relevant procedural documents the final decision on the appointment to a legal person criminal law measures in the form of a specific amount of the fine, the confiscation of property or liquidation.

General rules of application to legal persons measures under criminal law – a system of established by law and mandatory for the court initial requirements, which should take into account the court at determination procedure and extent of application to legal persons measures under criminal law and which it should be guided by choosing the size and type of measures in each particular criminal proceedings.

It is emphasized that the decision on application of measures under criminal law to legal persons may be accepted by the court when making a guilty verdict. In addition, in the case of closure of proceedings against a legal person the prosecutor is obliged to accept the decree, and the Court noted this in acquittals or enact a decision.

It is noted that the availability of the provisions of the Law of Ukraine № 314-VII, which promote compliance with the requirements of individualiza-

tion measures under criminal law on legal persons in process of their application (article 96-10), can be estimated from the positive side.

At the same time, they are not without drawbacks and require its correction. Alternatively, consequently, article 96-10 of the Law of Ukraine № 314-VII would have read as follows: «1. Court applies to the legal person measures under criminal law within the limits set out in Part 2 of Art. 96-7 of the Code, considering the size of the damage which caused, the nature and extent of illegal benefit, which is obtained or could be obtained a legal person and other circumstances which characterize the degree of severity the crime committed by its authorized person and the measures which a legal person takes to prevent crime».

CRIMINAL PROCEEDING, CRIMINALISTICS, OPERATIONAL INVESTIGATIONS

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THE INTERACTIONS BETWEEN THE PRIVATE SECURITY ORGANIZATIONS AND THE LAW ENFORCEMENT AGENCIES: KEY PRINCIPLES AND AREAS FOR IMPROVEMENT IN A FIELD OF CRIME PREVENTION

The crime prevention is a peculiar sphere of the social services that resolves by specific methods the tusks of ensuring legitimacy, law and order and counteracting to the criminality as one of the most dangerous and the social life disorganizing phenomena.

For Ukraine in which the pass to the new economical conditions has led to the considerably serious changes in all the spheres of its life and social activities, to the implementation of the new forms of economic management, to the official authorization of business, agent and other commercial activities, the possibility of efficient use of the security potential is getting a special significance.

Nowadays the state machine and in particular the law machinery is not ready to efficiently and in concord pursue a policy of coordination and control and a legal policy of security of the entrepreneur structures. That's why, taking into consideration an importance of the given kind of activities, the State must improve a legal control of the private security business and by all means assist and support its growth and consider the security agencies as partners in the field of protection of law and order.

To withstand the crime used to be and remains the main goal exceptionally of the law machinery.

In the same time, at the present stage of social progress of the society, a wide involvement of the private structures into the process of resolving the problems of the security guaranty and the law order protection takes place.

The non-government security agencies as well as the security services possess a huge potential and experience to provide assistance to the law enforcement authorities in the mentioned spheres of activities.

Therefore, the activities of the parties of interaction must be based on the accurate and strict observation of the law that regulates the organization of cooperation as well as of the competence, the forms and methods of the functioning of the interacting structures.

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ACTUAL CIRCUMSTANCES OF CRIMINAL PROCEEDINGS AND THEIR ESTABLISHMENT BY COURT OF THE FIRST INSTANCE

The article is devoted to research of the content of concept of the actual circumstances of criminal proceedings, and also procedure of their establishment by court of the first instance in the course of judicial review.

Such research has as independent relevance, and within consideration of the questions connected with functioning of the mechanism of formation of the validity of the judgment in competitive process, compliance of the made judgment to the requirements established by the criminal procedural law.

The actual circumstances of criminal proceedings which are established by court of the first instance in the course of judicial review, are defined by the author as set of actual data which characterize circumstances of the act which is a subject of judicial review, and also system of the proofs provided to court and investigated by it in confirmation of existence or absence of such circumstances. Establishment of the actual circumstances of criminal proceedings is recognized as a necessary condition of removal by court of the lawful, reasonable, motivated and fair judgment.

The valid conclusion that establishment of the actual circumstances of criminal proceedings by court of the first instance in the course of judicial review happens within judicial proof as sets made by the parties of criminal and legal dispute and the court, the procedural actions provided by the law which define process of removal by court of the total decision on business is formulated also.

It is specified that trial (judge) as the subject of proof, making the judgment and stating in it the conclusions and decisions, has to not only own the current legislation and correctly be able to apply it, but also to be able to reason the theses, to explain disputed issues, to prove the position, to convince respondents of legality, validity and justice of the decision made by it.

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PECULIARITIES OF SPECIAL KNOWLEDGE USE TO IDENTIFY AND OVERCOME THE COUNTERACTION TO INVESTIGATION OF CRIMES IN THE SPHERE OF ILLEGAL DRUG TRAFFICKING INVESTIGATION IN THE PROCESS OF INTERROGATION

Interrogation is an important source of information about the circumstances of committing crimes in the sphere of illegal drug trafficking. In preparation for interrogation investigator examines significant information gathered, estimates the investigative situation, reveals conflicting circumstances, identifies tactics to overcome them and takes measures for active use of special knowledge.

Analysis of judicial and investigative practices allows to single out the categories of experts that can be engaged in the interrogation of suspects: pharmaceutics or pharmacists, chemists, experts in the field of agriculture and agricultural science, neurologists, psychiatrists, interpreters, psychologists and teachers.

The main task of an expert in interrogation is to help the investigator to ascertain and assist in correct use of information, related to the field of expertise in the investigation, providing advice and clarification.

At the stage of preparation for interrogation specialist's help consists in providing advice to specify the testimony of the person questioned, identification or verification of certain circumstances, the analysis of legal provisions, selection and preparation of scientific and technical means to record the results of questioning and so on.

At the stage of interrogation specialist helps the investigator: 1) to interpret the contents of the statement adequately; 2) to clarify the information obtained; 3) to find out what level of special knowledge the person possesses; 4) to diagnose signs of counteraction; 5) to expose false testimony concerning special matters, overcome attempts to evade giving true evidence.

At the final stage of interrogation evidence is fixed, the information obtained is evaluated and analyzed and all the unascertained circumstances are established by formulating further questions.

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SOME ASPECTS OF THE APPLICATION OF PREVENTIVE MEASURES IN THE FORM OF BAIL

Human rights and freedoms are the most important and valuable component of each democratic, legal state, as without the development of the individual, respect of person's rights and legal interests it is not possible to imagine the state's future. Human rights are enshrined in all major legal acts, in fact, most of national legislation rules are originated from the international law norms, where the observance and realization of human rights are several stages higher. 64

One of the main branches of law where the all interests of every person interconnected is the criminal procedure law, a feature of which is that it regulates relations of the highest values of human life, health, honor and dignity. Among the various issues that arise in the case of human rights violation, special attention should be paid to the restoration of these rights, and further obstacles in creating of new ones. It is necessary to focus attention on one of the main aspects of the criminal procedure law – the application of preventive measures in the form of bail.

One of the types of preventive measures during the criminal proceedings is collateral. Specified preventive measure can be used to stop or prevent a criminal offense of unlawful conduct of the accused during the criminal proceedings. The use of preventive measures applied during the preliminary investigation – investigating judge at the request of the investigator, the prosecutor agreed or at the request of the prosecutor, and during the proceedings – the court at the request of the prosecutor, on the evidence presented by the parties and criminal proceedings under certain circumstances, including which can play a significant role property status of the individual.

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AGREEMENT ON THE RECONCILIATION OF THE PARTIES IN CRIMINAL PROCEEDINGS AS AN ELEMENT OF RESTORATIVE JUSTICE

Institute of the settlement in court as an alternative of sentencing emerged in 1970 in the United States of America and Canada. The emergence of this institution did not attract much attention by legal scholars and practitioners. The first written mention of the deployment of conciliation agreements is in the collection of judgments Ontario (Canada) in 1974. From 1970 to the early 90's program of this institute applied only in some states in the US and Canada, but not widespread.

Procedural order of conclusion of an agreement and its approval is clearly defined in 469-475 Articles of Criminal procedure code of Ukraine. The first stage begins with informing the investigator or prosecutor parties about the possibility of reconciliation, explains their rights and mechanism of reconciliation.

The second phase contains a signing the agreement between the suspect and the victim. This agreement is signed by the parties.

The third stage of conciliation begins, or after referral by the prosecutor to the court indictment act with the agreement on reconciliation, if the agreement was reached at the pre-trial investigation, or from the date the parties during the trial sign an agreement, then the court proceeds to review the agreement.

The fourth stage of reconciliation between the victim and the suspect or the accused himself involves implementation of the settlement.

Thus, the institution of a settlement agreement in a criminal trial in Ukraine can be seen as an element of restorative justice, whereby given an opportunity to settle the conflict between the two parties. The implementation of this institution in Ukraine demonstrates the readiness of our country to change the concept of criminal proceedings in accordance with European standards.

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SIMULATION IN CRIMINALISTICS: THEORETICAL FOUNDATIONS OF COGNITIVE-SYNERGETIC APPROACH

Te modern stage of criminalistics development is characterized by integration processes that lead to formation of new methodological approaches. In this connection the article represents the theoretical ground for possibility to use cognitive-synergetic approach in criminalistics researches. In particular the theoretical ground and practical recommendations on the use of the method of modeling for improvement of the process of taking separate tactical decisions by the investigator are proposed here.

Thus the G. Khaken's idea of analogy between recognizing of forms and taking decisions is used. The task of taking of a decision by the investigator about choosing of typical version of the motive of commission of a crime is interpreted as reverse task of modeling – the task of recognizing of forms. The correspondence in structure of criminalist characteristics of a crime between signs of method and situation of commission of a crime, personality of victim and generalized data about guilty person through the motive of commission of a crime is also used.

In indicated formulation the task of recognizing of forms is translated as establishment of belonging of aggregate of crime signs to certain motive to which generalized data about guilty person are put in accordance.

The description of a mechanism of bringing out of a decision in concrete situation of investigation is presented. The article is also presents the results of computer modeling of bringing out of a decision (recognition of motives of a crime commission) holding with the use of technology of intellectual analysis of data in which algorithms of trees decisions are realized.

The conclusion is made that the ideas of synergy may be used in investigation of crimes activity for effective use of criminalist characteristics of crimes, working out of CASS of support for taking of ground tactical and procedural decisions by the investigator.

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GENERAL DESCRIPTION OF CRIMINAL REALIZATION IS IN RELATION TO UNCONVICTED PERSONS

In the modern terms of realization of judicial legal reform, special actuality, acquire the question of realization in relation to unconvicted persons. It is CPLD, above all things with such persons are socially dangerous, through their propensity to the feasance of offences and publicly dangerous acts, at the same time, they are the least protected, in a legal aspect, by the category of population.

Ponderable payment in the decision of this problematic was become by works of domestic and foreign research workers and practical workers in the field of criminal judicial law in particular labours of O.S. Artemenko, Yu.P. Alenina, V.M. Vereschaka, O.I. Galagana, V.G. Goncharenko, B.M. Derdyuk, I.V. Beetle, P.A. Kolmakov, M.V. Kostickogo, V.T. Malyarenko, G.V. Nazarenko, I.L. Petrukhina, B.A. Protchenko, L.G. Tat'yaninoy, V.M. Tertishnika, E.T. Shakarov, S.L. Sharenko, I.A. Scherbak et al, which devoted the labours the separate questions of realization in relation to unconvicted and limitedly responsible persons.

The purpose of writing of the article is a scientific ground of criminal realization in relation to providing of rights and freedoms of unconvicted persons in the criminal legal proceeding of Ukraine.

Research of historical sources of origin and development of legislation in relation to the acts of unconvicted persons conditioned by problems and tasks of lead through of legal reform in Ukraine and bringing domestic norms over to the international standards. De autre part, mechanism of defense of rights for the noted group of persons, that exists in any state, foresees the certain following which is based on to publicly legal to practice.

In the criminal legal proceeding actual is a question of pretrial investigation on realizations about the publicly dangerous acts of persons, acknowledged unconvicted, and also them judicial trial. Competent law enforcement authorities are under an obligation to set the circle of circumstances which are subject finishing telling, and conduct rapid, complete, objective and comprehensive research of these circumstances.

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FORMATION AND DEVELOPMENT OF INSTITUTE OF DETENTION IN CRIMINAL PROCEEDINGS

The article is devoted to research of process of formation and development of institute of detention in criminal trial.

Studying of the standard sources regulating detention of the person on suspicion in commission of crime, at different stages of development of the domestic criminal procedure legislation testifies that the detention is one of the most ancient legal institutes which emergence was objectively caused by a problem of disclosure and investigation of crimes.

Throughout the entire period of development of the criminal procedure right the continuity of norms about detention of the person with more careful subsequent regulation of bases and an order of its application is observed.

It is established that existence of theoretical and practical problems of standard regulation of institute of detention, not resolution and dilatability of single questions in science of criminal trial testify to need of further development of the directions of reforming of institute of detention for criminal trial.

Development of institute of detention has to be carried out on the way of ensuring balance and an optimum combination of interests of the bodies which are carrying out criminal proceedings, in the course of investigation and judicial review of crimes and persons, whose rights, freedoms and legitimate interests are exposed to restriction as a result of detention application.

INTERNATIONAL LAW AND COMPARATIVE JURISPRUDENCE

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INCLUSIVE EDUCATION IN THE INTERNATIONAL LAW

For the first time it was admitted in the international documents that disability isn't the medical problem but the social one, that's why it is the problem in human rights.

An important component in the institution of an inclusive education is the determination of the main principles of a state policy shaping according to the disable people, who must require from their government to be responsible for the launching of the system which decline discrimination and restrict the possibility in achievements of living standard which must be equal to the standard of life of other citizens, including the possibility to be educated.

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IN RELATION TO A QUESTION ABOUT THE SPECIFIC SIGNS OF CONTRACTUAL FORMS OF SETTLEMENT OF RELATIONS THERE IS «EXCHANGE NOTES»

Wide distribution of contractual forms in the different spheres of vital functions of society and state activates interest of scientific association in research and analysis of existent contractual forms of adjusting of relations. Contractual forms are presented for today in the current legislation of Ukraine does not have the single system and present by a soba totality of norms worked out in a greater or less measure, that is the constituents of separate industries, subindustries or institutes of right. It should be noted that on this time the article of majority of scientific researches are the general questions related to the use of different contractual forms both in activity of society and the states on the whole.

In legal science distinguish the different contractual forms of settlement of relations, in particular: agreement, agreement, contract, convention, protocols, pacts, memorandums, consent, legal transaction exchange and row notes other.

Contractual practice an exchange notes is used as the simplified method of entering into international contracts, at that contractual connection is recorded by an exchange between parties as a

rule, text is recreated documents (by folias) in one of that other and a consent is expressed from. An exchange notes is the widespread form of agreements that consist international organizations, by the states for the settlement of external relations. Under a «exchange» in a legal value the concrete action (activity) of person understands sent to the origin and further development of relations in the field of corresponding on a certain question. In order that an exchange took place it is necessary to execute next terms.

First condition – for realization of exchange necessary participation at least of two parties. Second condition – both sides must co-ordinate or agree with terms that is envisaged in a note. Unlike an exchange notes, an ordinary note is a document outwardly diplomatic correspondence in form an appeal, a concrete legal or unlegal fact is mainly established in that.

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