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# THEORY AND HISTORY OF STATE AND LAW; PHILOSOPHY OF LAW

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# SUBSIDIARY CHARACTER OF POSITIVE LAW IN EASTERN LEGAL TRADITION

The conducted analysis allows highlight the following: legal systems of the Eastern countries has the following common features as: transcendence of law non-differentiation of law, religion and moral, legitimation of state and law, subsidiary character of positive law, multiple sources of law, independence of law from government policy, superiority over the government policy and its commitment to the law.

Singling out the signs of the Eastern tradition of law, first of all, attract the attention of Western scholars. American lawyer H. Berman, emphasizing the contemporary crisis of Western law, calls for overcoming the crisis through dialogue with non-Western law. Here are his thoughts on the matter: "What is new today is the challenge to the legal tradition as a whole, and not merely to particular elements or aspects or it; and this is manifested above all in the confrontation with non-Western civilizations and non-Western philosophies. In the past, Western Man has confidently carried his law with him throughout the world. The world today, however, is suspicious – more suspicious than ever before – or Western "legalism." Eastern and Southern Man offer other alternatives... Finally, a social theory of law must move beyond the study of Western legal systems, and the Western legal tradition, to a study of non-Western legal systems and traditions, of the meeting of Western and non-Western law, and of the development of a common legal language for mankind. For only in that direction lies the way out of the crisis of the Western legal tradition in the late twentieth century".

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# GENDER-BASED LEGAL ANALYSIS OF THE LEGISLATION AS A TOOL FOR GENDER EQUALITY

This article is devoted to general theoretical and methodological analysis of gender and legal expertise of the legislation. It covers the main requirements of these instruments to ensure gender equality.

Gender-based expertise of legislation revealed certain difficulties, including:

a) lack of clear government policy that would include functional and structural programs of implementation of gender strategies: restructuring, development, improvement, assessment of policy, special mechanisms, specific sets of measures, criteria of progress, gender construct modules in various fields of social and economic life;

b) the absence of such elaborated policy does not allow fully determining the place and role of legislation, when there is such, and identifying its value for optimal balance of the political, public and social life in terms of gender equality;

c) the problem of strengthening gender equality in many political and legal acts is considered mainly due to the specific needs of women and is addressed to them; male factor is rarely considered; legal policy contains no new gender approaches and gender policies in the legislation to implement the principle of gender equality;

d) legal reality, its gender dimension corresponds to a time when awareness of equality of men and women in the country, partnerships between them, gender division of roles occur mainly spontaneously at the stage of formation, albeit too slow, of new approaches to determining the legal basis of gender equality;

e) underdeveloped sociology of law that did not allow clearly defining the parameters of gender awareness, gender culture in the legal field and led to the formalized conclusions;

f) lack of awareness of international experience in conducting gender expertise of legislation inhibits these processes in Ukraine.

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# GOVERNORATE AND POWIAT REVOLUTIONARY COMMITTEES IN POLTAVA GOVERNORATE: ORGANISATIONAL STRUCTURE AND FUNCTIONS (DECEMBER 1919 – APRIL 1920)

Legal framework of forming and structuring the governorate and powiat (county) revolutionary committees organized in December 1919 by the Soviet Russian military power in Poltava Governorate was based on "Revolutionary Committees Regulations" adopted in late October 1919 by the All-Russian Central Executive Committee and the Defense Council of Soviet Russia and "Temporary Regulations on the Organization of Local Workers' and Peasants' Governments" adopted in late 1918 on the basis of the Decree of the Provisional Workers' and Peasants' Government of Ukraine "Organization of Local Governments". The Governorate Revolutionary Committee included the following departments: Management Department, consisting of administrative and rules subdivision, information and instruction subdivision, registration subdivision, special registration subdivision and police subdivision; Labour Department; Social Security Department; Health Department; Finance Department; Law Department; Education Department and Food Committee. Various ad-hoc commissions were structural units of the Governorate Revolutionary Committee. Revolutionary committees being created as extraordinary war-time bodies of proletarian dictatorship influenced the character of their structuring and competence. The organisational structure and functions of powiat (county) revolutionary committees were similar to those of the Governorate Revolutionary Committee. They were characterized by a great number of various temporary commissions. The structure and competence of the governorate and powiat revolutionary committees generally met the assigned tasks of strengthening the Soviet power, brought in Ukraine on the tips of Red Army bayonets. Their optimal structure was provided by constant reorganization of their departments.

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# APPLICATION OF JUDICIAL DISCRETION IN THE ROMAN LAW LEGAL SYSTEM

In modern legal science question about the nature and possibility of application of judicial discretion and its limits remains debatable. The main causes of this are seen in the absence of a clear understanding of this phenomenon, its limits in law enforcement and in the lack of a theoretical elaboration of the dominant influence of law on the individual elements of the national legal systems. Given the ever-increasing role of the courts in the implementation of law, improvement and development of law, the author analyzed the characteristics and fundamentals of judicial discretion in one of the three main contemporary legal systems of the world. The general problem of judicial discretion refers to those legal issues that inevitably arise in any legal system. Of course, even within the legal system the field of judicial discretion can vary quite significantly. However, this does not mean that for some reason, judicial discretion can be eliminated altogether. Analyzing the Roman law (civil law) legal system and comparing with the system of "common law", it is seen that each of them is associated with a well-defined notion of judicial discretion, and therefore the analysis of the problem in different legal systems depends on the concepts of law itself. And since this phenomenon is something objective, its jurisprudence should be comprehensively studied. In addition, it seems relevant to explore the possibility of using the issue of judicial discretion by the courts of our country, in particular – the Supreme Court of Ukraine.

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# TERRITORIAL TRANSFORMATION AND SETTLEMENT OF OCHAKOV REGION AS THE PART OF THE RUSSIAN EMPIRE: HISTORICAL AND LEGAL ASPECT

The article deals with the resettlement with Moldavian element of Ochakov region as the part of the Russian Empire after the conclusion of Treaty of Jassy of January 4, 1792 and the actions of the Russian government towards settlement of the new territory.

The resettlement of Moldavians over the Dniester River began in the 6th century, and in the 7th century it took mass character. Since 1792 the Ochakov region had been home to 19.000 inhabitants. One of the ways to attract Vlachs was extensive distribution of large estates to Vlach officials and boyars under the condition of their settlement. Along with this, the Russian government, which needed people for settlement, took all possible measures to return to Russia Moldovians, Vlachs, Raskolniks and Russian people who fled to Poland during the Turkish war and to settle them in the lands of Yekaterinoslav Viceroyalty. The migration policy of the Russian Empire and the natural population increase has led to the fact that by 1859 the old Ochakov region included 129 Moldavian settlements.

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# STATUTES OF LITHUANIA AS HISTORICAL MONUMENTS IN THE SYSTEM OF NATIONAL SOURCES OF LAW

Among the researches carried out at the present stage of development of national historical and legal science, important place occupies learning and generalization of experience of systematization of legislation on Ukrainian lands. At the same time researchers focus attention on the codification of law of almost all chronological periods of Ukrainian law-making. However, despite multidimensionality of contemporary coverage of the history of Ukrainian law, there still remain a number of unexplored problems. In particular, of some interest is the study of the causes of completion, revealing the sources and structure of Lithuanian Statutes, as well as their application in the Ukrainian lands.

The greatest achievement in the systematization of law in Grand Duchy of Lithuania was signing of three Statutes of Lithuania in the XVI century. Lithuanian-Ruthenian law codification took place on the principles of priority of written laws (though the Statutes of Lithuania contain links to ancient customs), the unity of the law (though the Statute of Lithuania did not contradict the validity of other regulations), the sovereignty of the State (though in 1569 this sovereignty was lost) and the equality of all before the law (though actually statutes recognized the uneven legal capacity of different social groups).

The First Statute of Lithuania during its adoption was not printed. For practical usage, it was rewritten and distributed in handwritten form. As a result of the evolution of legislation, handwritten lists of the Statute were supplemented with new articles

Subsequently, lists of the First Lithuanian Statute became numerous. They were also translated into other languages, including Latin (1530) and old Polish (1532). The Statute of 1588 was the first Lithuanian Statute, which was printed. Original language of this document was old Russian. Tough on the Ukrainian, Belarusian and Lithuanian lands usually was used Polish edition of the Third Statute of Lithuania and publication in ancient Russian language was rare. However, it does not give evidence to state that the original language of the document was Polish, because all the Polish editions except edition of 1786 contained a reference to the possibility of an appeal to Russian edition if needed.

Lithuanian statutes were an important source of law in the Ukrainian lands. They provided continuity and succession of many regulations and institutions of Ukrainian law formed in Kievan Rus and Galicia-Volhynia state. The Statutes of Lithuania were distinguished by rather high for the time level of legal technique: there were many definitions of legal terms (e.g., crime, property rights, treaty, contracts, etc.). Lithuanian statutes also positively influenced the development of Ukrainian legal thought and the formation of legislation.

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# USING THE TECHNIQUES OF APPLIED MATHEMATICS IN THE STUDY OF THE PHENOMENON OF CORPORATE CRIME

Corporate crime threatens the economic security with such negative factors as increased corruption of public officials and members of the judiciary and law enforcement agencies, increased unemployment, tax evasion, monopolization of a number of market segments, loss of competitiveness, deterioration of the investment climate, significant decrease in entrepreneurial activity, deformation of justice. The necessity for criminological research on the problem of corporate crime determines the need to combat corporate crime and the nature of the cognitive science of criminology.

Article aims to study the possibility and necessity of using methods of applied mathematics, namely mathematical modeling for the purposes of criminological studies of the phenomenon of corporate crime.

At a general level, the methodological aspects of research today are becoming more relevant because any criminological research must start from delineation of methodological principles of directions for obtaining the necessary information, its processing and fixation of the relevant facts. Methodology is the system of theoretical and world outlook paradigms that define the principles of scientific research and analysis, as well as ways of cognition, which are used for research. The methodology includes the methods of the empirical and theoretical levels of cognition, which are separate but interconnected stages of the cognitive process.

Based on the interpretation of the terms "model" and "abstraction", it is possible to specify the concept of modeling as a process of constructing models of real objects (objects, processes or phenomena); to replace the real (original) object with equivalent; to study objects of knowledge on these models. The most effective is mathematical modeling, which applies a replacement of the real object with its mathematical model for the purpose of further analysis.

Example of formalization is mathematical models, which are based on the use of various tools of developed mathematical science. The general principles and requirements with respect to the mathematical models are:

1) adequacy – conformity, identity with its original model;

2) objectivity – correspondence of the scientific findings and real conditions;

3) simplicity – "freedom" of model from secondary factors;

4) sensitivity – ability of the model to respond to changes of the initial parameters;

5) persistence – the smallest change in the initial parameters must meet the change in the solution of the problem as a whole;

6) versatility – latitude of application.

Traditional methods of mathematical formalization of social phenomena, suitable for the needs of criminological research of corporate crime are, in particular, the method based on the theory of differential equations and the method of multidimensional scaling (Torgenson's metric method).

Manipulation of mathematical apparatus helps to solve a number of sociological problems. These tasks are, in particular, processing and analysis of survey data and other sociological studies; construction of mathematical models of social processes and phenomena; explanation and prediction of social phenomena. Based on the foregoing, we can say about the possibility of creating an abstract (theoretical) model of the phenomenon of corporate crime as a speculative design, which is structurally composed of objective and subjective data in a symbiotic relationship, and that can be fully or partially described by adequate mathematical model in the procedure of development of hypotheses about the system the nature of corporate crime.

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# ATTITUDE OF UKRAINIAN POLITICAL PARTIES TO THE POLISH STATE: FIRST HALF OF 1920'S

The research on the Ukrainian parties' attitude to the Second Polish Republic at the beginning stage of its existence is very topical scientific problem nowadays. The leaders of Ukrainian Movement and other categories of Ukrainian population who lived on the territory of newly formed state stressed their wish to independence, understanding the existence of Eastern Galicia and Western Volyn in such state formation as regime of occupation of ethnical Ukrainian territories. The ways of establishment of independence or autonomy of Western Ukraine in Poland were observed by national forces differently. The part of political forces decided to choose covert way; others supported legal acts which were performed during the interwar period. At the beginning of 1920s the activity of Ukrainian political parties was occupied with the solution of Ukrainian question outside Poland, i.e. through the Council of Antanta's Representatives and recognition by them of the eastern border and other future territories. The political situation was used by the Ukrainian left forces, particularly communists, the period of activity of which was 1920s. The communist state formation on the East of Europe influenced those forces. The changes on the Ukrainian political arena were held in 1925 when the Ukrainian National Democratic Alliance was formed. The basis of party's activity was "paddling its own canoe" and strengthening their forces through "organic work", fight using Sejm's tribune for the rights of Ukrainians and other national minorities, search of external support for their program's realization.

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# ISSUES OF MILITARY POLICY OF THE STATE IN THE THEORETICAL HERITAGE OF M.Y. SHAPOVAL

The presented paper is devoted to examination of the position of one of the prominent Ukrainian figures of the time of revolution of 1917-1920 Mykyta Yukhymovych Shapoval on national military policy. In the article the number of basic elements that form a holistic understanding of the essence of military policy as one of the main prerequisites for statehood and priority direction of its development is researched. Today probably there is no need to prove the relevance of justification of the compliance of military policy with the needs to ensure the sovereignty of the state. Retrospectives of our history and the contemporary events prove the expediency of research in terms of collecting and updating both socio-political and purely military experience, which is a key component of military construction and military policy in general. One of the important directions in this issue is the desire to form invariance of views on the perspectives of the evolution of Ukrainian state troops, modernization of foundations of military policy, the establishment of a new citizenship in society against the army and its place in social development. Particularly important here is the concentration and consideration of historical experience gained in crisis development. In the history of Ukrainian nation such a period, not very remote chronologically and having much in common with the current situation in the context of geopolitical and social change, is a time of revolution of 1917-1920.

The conclusions are made that even on the basis of a brief review of the fundamental ideas of Mykyta Yukhymovych Shapoval on military policy of the Ukrainian state, it should be noted that he used some of the most fundamental provisions that are still relevant today. Firstly, without a standing army state will never be able to guarantee its sovereignty. Even more – without strong army the state is doomed despite consciousness and patriotism of its citizens. Secondly, the army should be the army – i.e. it should obey the fundamental principles of singleness of authority, strict discipline, respect for statutory instruments and more. Thirdly, military policy should be carried out only by public authorities excluding the situation of the politicization of the army. The sad experience of military defeats both of Central Rada and the Directorate has proven rectitude of these provisions in full.

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# LAW AS AN INTEGRATING PHENOMENON OF THE AXIOLOGICAL AND NORMATIVE STRUCTURE OF THE LEGAL REALITY

To navigate in an infinite variety of definitions of the nature of law and at the same time not to negate its inherent multidirectional manifestation, of course, it is necessary to apply to the category of legal reality as a methodological tool adequate to the task. Therefore, the relevance of philosophical understanding of law as a special axiological and normative structure is determined, on the one hand, by practical problems of functioning of law in society and the transformation of post-totalitarian society in particular, and on the other hand – by theoretical problems associated with ideological and methodological provision of law on the basis of philosophical and legal research.

The legal reality is interdisciplinary term, since, being both tool and object of study, it is found not only in some areas of legal science but also in philosophy, sociology, political science, culture and more. By combining and structuring all phenomena of legal reality, this concept represents a set of all static and dynamic phenomena that are permanently deployed in a particular legal system. There is even an idea to synonymize the concepts of "legal reality" and "legal system" of society of a particular historical period. It is important that within the philosophical and ideological disciplines legal reality forms a kind of holistic universe of legal phenomena and processes within a given space-time continuum.

Thus, the problem of axiological bases of law is in the value field of social life, characterized by a continuous process of gradual increase in the objective value to law. The function of law in this context is found in the ability to organize and integrate value structures of legal reality. For this reason we can speak about the axiological and normative character of legal norms and realities.

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# JUVENALISTIC CONCEPTION OF REALIZATION OF NEGATIVE LEGAL LIABILITY BY A JUVENILE IN UKRAINE

Article is devoted to the theoretical generalization of process of juvenile's negative liability realization in the light of forms and goals of its practical realization. The author made a point on the fact that juveniles should be treated specifically in the prosecution process. Because of the defects of legislative regulation of this issue at the national level, nowadays, juveniles' prosecution process is similar to adults', which contradicts general principles of the UN Convention on the Rights of the Child and other international documents. Because of this, it is necessary to use the complex method in the regulation of the juvenile rights, including the issue of juvenile liability, following the traditions of juvenile justice.

The author insists that all reforms of the issue of juvenile liability must be based on the replacement of punitive aim of the liability with educational and resocializational and should include complex changes of a system of institutions which provide realization of juvenile liability. These reforms must include application of extrajudicial sanctions to young offenders as guarantee of their specific rights. All these improvements will give juveniles a chance to be not just punished but also to be rehabilitated.

Also, the author provides the necessary recommendations to improve system of juvenile negative liability in general.

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# EFFECT OF LEGAL ACTS AS A REFLECTION OF THE QUALITY OF LEGAL LIFE

The article examines the theoretical aspects of legal acts in the context of legal life, which gives the possibility to determine the relationships of these phenomena.

Analyzing dynamic nature of the legal acts and legal life phenomena, the author defines their relationship, which can be described as the following: the right is an integral part of the legal life, because if the right does not carry out its purpose and is not practical and realistic, there will be no legal life at all; legal life goes on in society, that is, first of all, it is a kind of social life, respectively, the effective force of law, including regulatory mechanism, facilitates the ordering of relations between subjects on the basis of legal standards and contributes to the dynamics and the development of legal life; the appropriate level of quality of legal life is an indicator of the level of validity of law.

It is concluded that the effect of the right can be understood above all as the effect of legal acts, which includes: practical implementation of legal acts, the mechanism of legal regulation, legal impact.

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# INDEPENDENCE OF THE JUDICIARY IN THE CONTEXT OF MODERN LEGAL REFORMS

The problem of independence of the judiciary is one of the most difficult in the administration of justice. Justice has one objective, one goal – to be guided in its activities by the principles of supremacy of law, legitimacy, fairness, objectivity, protecting the rights and freedoms of man and citizen.

The article aims to study the general principles of judicial independence in Ukraine in the context of current legal reforms.

The issue of judicial independence remains relevant in independent Ukraine. This issue was considered in the Article 11 of the Law of Ukraine "On Status of Judges" which was adopted on December 15, 1992. In this article independence of judiciary is provided through:

• established procedure of their appointment (election), termination of powers and dismissal;

• special procedure for assigning military ranks to judges of military courts;

• lawful procedure of administration of justice;

• secret of judgment adoption and the prohibition of its disclosure;

• prohibition of interference in the administration of justice at threat of legal responsibility;

• responsibility for contempt of court or a judge;

• right of a judge to retire;

• inviolability of judges;

• creation of the necessary organizational, technical and informational conditions for courts' activities, material and social security of judges according to their status;

• special order of funding of courts;

• a system of judicial self-government.

The next step in ensuring judicial independence was the adoption in 1996 of the Constitution of Ukraine.

Reform in 2002 also stipulated further development of the law governing the status of judges. The functioning of judicial self-government is one of the guarantees of the independence of justice. Judicial self-government should involve only those persons who are directly involved in the judicial activity.

Thus, we can say that the independence of judges is one of the foundations of a democratic and civilized society and guarantee of reliable protection of social values determined by the Constitution of Ukraine and the rule of law in the state.

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# HISTORICAL CONDITIONS OF JEWISH LAW FORMATION DURING PERIODS OF RISHONIM AND AHARONIM

Rabbinic era in the history of Jewish law originates from the second half of the Middle Ages and continues to the present day. After Gaon and exilarchs lost power in Babylonia, the Jewish people began to move massively to Europe. Instead of Palestine and Babylonia such countries as Spain, France, Germany and other European countries became new Jewish centers.

From the standpoint of Jewish law rabbinic period can be divided into two stages:

1) מִינוֹשׁאִר ("rishonim") – in Hebrew means "the first". The so-called period of the first rabbis continued from XI to mid XVI century.

2) מִינוֹרַחַא ("aharonim"), which is translates as "the last". Period of last rabbis originates from the second half of XVI century and continues until XX century.

Historical conditions in which the rishonim took place were extremely difficult for European Jewry. This led to the fact that scientists-halachists were often forced to move and escape from Europe to Africa. The reasons for this fact were: 1) mass crusades; 2) formation of the judiciary authorities – "Inquisition" – at catholic churches; 3) adoption in a number of countries of the series of humiliating for Jews laws prohibiting Jews to participate in public and political life, to practice Judaism and mass application of discriminatory measures; 4) the wave of expulsions of Jews from Europe.

The beginning of later rabbis' activity coincided with the historic boundary between the "Middle Ages" and "modern age". Historical events that took place not only in Europe but throughout the world caused changes in the life of the Jewish people. Turkish conquest of the Byzantine Empire, the discovery of America by Columbus, the beginning of the Reformation in Germany – all those historical events influenced the fate of the Jews, and therefore the development of their culture and lawmaking.

Thus, considering the historical conditions for the development of Jewish law during aharonim and rishonim periods, it is necessary to understand that because of the events that took place in the Middle Ages, the Jewish people did not have the opportunity to develop their legal system in such a way as other states did. Historical events in the world had evolved so that the Jews had always migrated from one state to another. The reason for this was the unstable political situation in the world, constant wars for territories and lack of democracy in its modern sense.

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# PHILOSOPHICAL AND LEGAL APPREHENSION OF PROFESSIONAL (DEONTOLOGICAL) LEGAL CONSCIOUSNESS OF LAWYER

Professional domain is one of the most significant among the capabilities of human personality. Professional activity, as confirmed by numerous studies for a large number of people is the way of finding and realizing the meaning of their lives. Accordingly, it is possible to consider the process of professional self-determination and professional fulfillment as one of the spectra of personal development in general, philosophical and legal apprehension of which is the purpose of this article.

It should be noted that an important element of building the rule of law state, legal culture of lawyer is a professional sense of justice, which is a collection of thoughts, ideas, concepts, confidence, feelings, expressing lawyer's relation to the population and its social groups, to the right, law, justice, idea of what is lawful and what is unlawful. In general, professional legal consciousness is a body of beliefs of a lawyer that reflect his own assessment of law, existing social and political system and compliance of his actions with law.

An important point in the context of the issue of legal consciousness is formation of lawyer's adequate system of general moral norms and beliefs that governs his behavior both in the professional field, and outside it. Exactly social, not legal, factors and conditions play a primary role at the stage of formation of legal consciousness of lawyer.

It is obvious that a number of general legal principles that express content of jurisprudence vary depending on the particular case. For example, the principles of law in democratic and totalitarian states certainly differ both in number and content. Therefore, in our opinion, the basic principles of law of a democratic society and the principles of legal consciousness of a top-ranked lawyer coincide.

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# THE UNITY OF THE INTERNAL AND EXTERNAL INTERNALIZATIONS OF SOCIAL AND LEGAL REGULATIONS AS A PLEDGE OF LAW-ABIDING BEHAVIOR

Social and legal regulations are the result of development in three areas, namely economic, social and political circumstances of civilized social life. Internalization is the indicator which shows how external factors affect the rights and transform into relatively stable internal beliefs. Law-abiding behavior depends on the efficiency of the public authorities in the social and legal spheres which one often confronts in life. Therefore, it should be noted that today there is a relatively stable and consistent trend of social and legal norms in a society that has a positive effect on all the processes of social life.

Social and legal regulations are designed to combine internal and external processes of human activity and through internalization to take over external processes of influence on human, which will then be determined into the internal persistent persuasions. In turn, they help form such a law-abiding behavior that would facilitate conservation of structure and function of a particular community. According to the direction of action social norms are divided into universal, private, mandatory and directing. It is known that law-abiding behavior is an interactive process – this means that the behavior of one member affects the behavior of another, thereby forming a generally accepted behavior for a specific audience. In other words, if every person in the community will support social and legal behavior that does not oppose their own interests to those of the state, then the impact on the formation of law-abiding behavior on the part of the state will be much more efficient and more effective. After all, the main task of the state is to ensure the legal status of each individual in order to protect its rights and obligations.

Human, as a separate element of socio-cultural system as a whole and for itself selects a behavior that is convenient only to it, which determines its law-abiding behavior. Regulations themselves form the behavior of individuals, depending on the impact on the individual. That is, social and legal norms are regulators that stimulate and direct the behavior of the individual in the legislation and make it impossible for it to commit wrongful act.

# CONSTITUTIONAL AND MUNICIPAL LAW

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# THE ADVOCACY AND THE STATE: THE INTERACTION IN ENSURING THE RIGHTS AND LEGITIMATE INTERESTS OF CITIZENS

The article investigates the problem of the relationship of advocacy with state power, identifies trends in the development of these relations from the standpoint of the criterion of independence of the legal profession and the development of democratic foundations of self-government. The article examines the problem of determining the place and role of advocacy in society, questions of admissibility of state intervention in the activities of advocacy and the possible types of such intervention.

The author concludes that the public authorities and the legal profession must build a relationship based only on partnership. In the article the principles of the relationship, as well as changes in the existing legislation governing the organization of work of advocacy of Ukraine, guarantees of professional activities of advocacy are observed. The advocacy in any civilized society is the only professional human rights institution that can effectively monitor the activities of the state through the implementation of its duties – protection of the rights and freedoms of citizens. The author proposes specific changes to the legislation "On the Bar and Legal Practice", which regulates relations between the institution and the state, as well as the principles of these relations.

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# THE TERRITORIAL BASIS FOR THE FUNCTIONING OF LOCAL SELF-GOVERNMENT IN UKRAINE: ISSUES OF REFORMATION

In the article the author analyzes current issues determining the territorial bases of the mechanism of functioning of the institution of local self-government in Ukraine.

The purpose of this article is to highlight topical issues related to the reform of the territorial foundations of local self-government, which will ensure the sufficiency of territorial communities, the availability of appropriate resources for the implementation of the rights of local communities by providing quality services to the population in accordance with the established social standards.

The author comes to the conclusion that the existing system of territorial organization of power is too cumbersome, requires significant resources for its maintenance, is overly centralized, creates duplication of powers of bodies of local self-government and bodies of state executive power, which leads to conflicts between different levels of public authorities at the local level, makes impossible the realization of the rights of relevant local communities.

Therefore, it is necessary to develop criteria for classification of localities into the categories of villages, settlements, cities, districts. Different population of administrative-territorial units generates the existence of disparities at the levels of budget due to sufficiency of the inhabitants of these administrative-territorial units, different availability of administrative, social and other services, etc.

The functioning of local self-government is impossible without defining territorial boundaries. Given this, the land outside settlements should be transferred to local communities (but should not be in manual control of the district, as it is now). The territory should be under the jurisdiction of the communities of basic level (village, town and city councils), with the exception of state owned lands (for state property). In order to maintain this it is necessary to differentiate the lands of state and communal property (according to legislation); to determine the nature and to fix the limits of the jurisdiction of each village, town or city council.

Finally, it will strengthen the financial basis of local self-government; increase incomes of local self-government; improve efficient use of land; bring services to the people and will implement social rights at the level of the corresponding territorial communities.

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# FREEDOM OF ASSOCIATION INTO TRADE UNIONS: COMPLIANCE OF CONSTITUTIONAL PRACTICE OF UKRAINE WITH EUROPEAN STANDARDS

Reproducing and specifying rules of international legal instruments, the Constitution of Ukraine in Article 36, together with the general provisions on the right to freedom of association, singles out trade unions among the variety of non-governmental organizations. This separation is made by special instructions that include the right to freedom of association the right to form social organizations, including trade unions. This approach is applied by legislators in Azerbaijan (p. 2 of Article 58), Armenia (Part 1 of Article 28), Georgia (p. 1 Article 26), Germany (Clause 3 Article 9), Russia (p.1 Article 30), San Marino (Article 8), Serbia (Part 1 Article 55), Finland (Part 2 §13), the Czech Republic (Article 27 of the Charter of Fundamental Rights and Freedoms, which is part of the Basic Law), Montenegro (Part 1 Article 53).

The above right in different forms and extent is embodied in the fundamental laws of Albania, Andorra, Belarus, Bulgaria, Greece, Spain, Italy, Latvia, Lithuania, Macedonia, Moldova, Monaco, Poland, Portugal, Slovakia, Slovenia, Turkey, Croatia and Switzerland. However, the most detailed consideration of the issue is observed in the constitutions of Portugal and Turkey.

Thus, based on an analysis of the relevant provisions of constitutions of European countries and Article 36 of the Constitution of Ukraine it is proposed to optimize the formulation of legal constructions of Paragraph 3 of this article and submit it to a separate article (Article 44), which will enable more detailed regulation of the right to freedom of association into trade unions and differentiation of this right from general provisions on the right to freedom of association (Article 36).

Given the aforementioned, it seems appropriate to move provisions of Part 3 Article 36 of the Constitution of Ukraine to Article 44, where the first sentence refers to the subject, the term "citizens" shall be replaced with the term "everyone" that we believe, firstly, is more consistent with international legal acts and international experience; secondly, there will be no conflict with Part 1 Article 26 of the Constitution of Ukraine; and thirdly, it will greatly expand the range of bearers of the right.

Therefore, we present Article 44 as follows:

"Article 44.

Everyone has the right to take part in trade unions with the purpose of protecting their labour and socio-economic rights and interests.

Trade unions unite people bound by common interests by virtue of their activities in enterprises, institutions and organizations regardless of ownership.

Restrictions on membership in trade unions are established by the Constitution and laws of Ukraine.

Those who work have the right to strike. No one can be forced to participate or not to participate in the strike. The procedure and conditions for exercising this right shall be determined by law".

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# PROBLEMS OF IMPROVING THE FUNDING OF POLITICAL PARTIES OF UKRAINE (CONSTITUTIONAL AND LEGAL ASPECT)

Political parties as one of the significant achievements of civilization, is an important, sometimes crucial element of the political system. They reflect the interests, needs and goals of specific social groups, act as intermediaries between citizens and the political system and act as a political tool in the formation and use of the political power. Situation and the activities of political parties are indicators of democratic nature of society and characterize the extent of its political and legal development. Particularly important is the role of political parties in post-totalitarian countries, if they contribute to the development of civil society, strengthening the rights and freedoms of man and the citizen.

In Ukraine there are no rules that allow institutions of civil society and voters controlling the financing of political parties in Ukraine especially during election campaigns.

The article aims at argumentation of the need to introduce transparent funding of political parties of Ukraine and the formation of proposals on improvement of constitutional law.

The issue of reform of funding of parties is of particular relevance in Ukraine. Firstly, the reform should protect the party from financial dependence on big business and individuals, prevent corruption in politics. Secondly, it should give voters a clear answer to the question who finances the party, whose interests this party represents and whom such party shall owe its victory in the elections. Thirdly, the regulation of funding of party should not be a hindrance to the development of the party system. It has to support not only the political forces in power, but also those who could potentially compete to gain power at the next election.

The need for public funding of political parties in Ukraine is determined by several reasons. First of all, public funding of parties largely prevents corruption in politics – in fact dependence of parties on private funding increases the likelihood that access to power will be used to support those who fund party activities.

Secondly, public funding guarantees a minimum level of financial support to the parties, which does not depend on the availability of sources of private funding. Thus, public funding promotes equal opportunities for inter-party competition. Thirdly, the availability of public funding allows parties to reorient to find additional sources of funding for

the development of party ideology, local communities, enhancing human and organizational resources.

In Ukraine, direct state funding of political parties was introduced by Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine Concerning Transparency of Financing of Political Parties in Ukraine" dated 27.11.2003.

No law of Ukraine "On political parties in Ukraine" or electoral law does not require political parties and candidates to provide professional independent audit of its accounting records and financial statements. All responsibility for the content, reliability and timeliness of financial reporting receipt and use of election funds entrusted to the election fund managers (who are elected from a list of certain categories of persons, but are not required to have special education or experience in audit or accounting).

In addition, Art. 17.1 of the Law of Ukraine "On Political Parties in Ukraine" obliges them to publish annually a financial report on their income and expenses, as well as report on the property. However, neither the said law nor regulations of the Cabinet of Ministers of Ukraine specify requirements as to the form, the content of these reports and the deadline for their publication. Accordingly, political parties, with few exceptions, do not always adhere to these commitments.

According to the above we believe that to enhance the transparency of the current funding of political parties, the following steps should be taken. Firstly, the content and form of annual reports of political parties should be clearly formed according to a single format and accompanied by proper documentation about the origin of money. Secondly, proper and comprehensive accounting of profits should be ensured (including specification of individual donations above a certain amount and name of contributor), expenses, debts and assets. Thirdly, records, including local party organizations and other institutions directly or indirectly associated with a party or under its control should be merged; parties should be obliged to provide annual reports to be verified by independent monitoring bodies and easy access to them by the public within the time prescribed by law. Parties should prepare and submit consolidated reports (in paper and electronic form) on contributions and directions for their use not later than 45 days after the reporting period. Reports of parties, which during the reporting period received public funding of their statutory activities, should enclose conclusion of independent auditor about the accuracy of the report.

In addition, the Law of Ukraine "On Political Parties in Ukraine" should enshrine the situation in which the party statute shall determine the order of creation and powers of internal party control of party funding, requirements for persons elected to such an agency (relevant requirements should ensure independence of the members of the body of unlawful influence by party members of other parties).

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# PROBLEMATIC ISSUES OF THE DEFINITION OF THE CONCEPT AND ESSENCE OF THE CONSTITUTIONAL ORDER

At the present time, when Ukraine is experiencing political and economic instability, and aggression on the part of the neighboring country aimed at infringing the sovereignty and territorial integrity of our state, the problem of ensuring the stability and permanence of the constitutional order of Ukraine and its principles gains actual value to scholars-constitutionalists. To achieve this goal, a priority task is definition of the concept and essence of the constitutional order. However, due to the transformation processes that our state currently faces, today there is still no common understanding of the nature and essence of the category of "constitutional order" in the scientific literature.

In addition, in the countries with the nascent democracy distorted understanding of the concept of the constitutional order is associated with complexities that arise in the implementation of the constitution. After all, between a legally enforceable constitutional order and the one actually existing there are not only some differences, but sometimes outright contradictions. Although provisions of the Constitution of Ukraine are recognized as directly applicable, they are of a general nature and can be distorted in the interpretation and specification in the laws and regulations. Thus, we should distinguish between a legally enforceable constitutional order and the one actually existing, which can be derived not only from the analysis of the Constitution, but also taking into account the actual political, social and economic relations.

Thus, the constitutional order is based on a combination of fundamental rules that facilitate consolidation in the public practice and in the justice of stable, equitable, humane and legal relations between the individual, civil society and the state.

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# EXPERIENCE OF LOCAL SELF-GOVERNMENT REFORM IN THE UK

Today monarchy as a form of government still exists in many countries. Of course, nowadays there are few classical absolute monarchies, but there are many modern states of its more modern and corresponding to the political situation types.

Most revealing, "classical" example of a parliamentary monarchy is the United Kingdom of Great Britain and Northern Ireland. The UK Parliament is the oldest in the world. It was formed in 1265 and was used as a model by many countries.

Britain has a complex system of administrative division and consists of four historical regions: England, Wales, Northern Ireland and Scotland. In England there are 9 regions that are divided into counties, six of which are endowed with the status of "metropolitan" counties (Greater Manchester, Merseyside, West Yorkshire, South Yorkshire, West Midland, Tyne and Weir). Greater London consists of 32 London boroughs and the City of London. The territory of Wales consists of 22 districts. In Scotland there are thirty-two territorial units of local self-government. The territory of Northern Ireland consists of twenty-six districts.

In each administrative unit (if it has more than 150 voters) local population elects a council for a term of 4 years. The basic form of its work is session, which deals with the most important local issues.

It is noteworthy that the UK, given the significant cultural, linguistic, religious dissimilarity of their regions, such as England, Wales, Scotland and Northern Ireland, managed to achieve decentralization of local government, which was necessary at this stage and continues to go through regionalization and democratization of its political institutions.

# ADMINISTRATIVE, FINANCIAL, TAX LAW

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# ADMINISTRATIVE AND LEGAL PROTECTION OF FAUNA OBJECTS

The article is devoted to essence and content of the legal category of "fauna". Author analyzes the approaches of various scholars to determine the category of "fauna". The author reveals the features of administrative and legal protection of fauna objects.

Public risk of cruelty to animals primarily lies not only in the harm caused to animals, but also in the fact that it is often the source of many other crimes and offenses against life and health of people. Judicial practice shows that many of those who have committed serious crimes against the person, started from the abuse of animals. Thus, of course particular attention should be paid to the legal regulation of relations aimed at protecting animals, which will promote and protect public morality. Those teenagers who abuse dogs in the future naturally will not respect human life. Recently, the idea that attention to the protection of animals is one of the manifestations of humane society has been recognized worldwide. There are many examples of cruelty towards animals, which preludes to a crime against the person. Cruelty to animals in society, which should exist according to the principles of morality and humanity, unfortunately, often occurs and negatively affects people's minds, their moral character, promotes violence and aggression among children and young people who are the future of our country and the international community in whole. We can not leave out the fact that the Law "On Fauna" should also contain at least the general rules that reflect the common principles of humane treatment of animals, protecting them from human cruelty.

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# PRINCIPLES OF LOCAL TAXES AND FEES ADMINISTRATION

This article is devoted to the issues of developing the principles of local taxes and fees administration. It is found out that in terms of reforming budget relations and updating the tax system in Ukraine the legislative consolidation of the principles of local taxes and fees administration has the relevance.

Based on the principles of tax law enshrined in the Tax Code of Ukraine the general principles of tax administration are singled out and analyzed in the article. The essence of the principle of legality of taxes and fees administration is defined; the principle of uniformity, which involves the use of similar approaches and methods of taxes and fees administration for all tax– and feepayers on the whole territory of Ukraine, is considered. Implementation of efficiency principle of taxation administration is grounded; fairness as one of the basic principles of taxes and fees administration is revealed. It is established that implementation of the principles of tax administration should guarantee the rights of tax– and feepayers, protection of their honor, dignity and business reputation.

It is proved that local taxes and fees are important financial basis of local self-government. The necessity of improving taxation by implementing special principles of local taxes and fees administration, which assist formation of the benefits of local budget, is proved.

Author's interpretation of the essence of special principles of local taxes and fees' administration is provided. Such principles as the principle of combining national and local management by local finances, the principle of independence of the subjects of local taxes and fees administration, the principle of combining the uniformity and differences of the procedure of local taxes and fees administration, sufficiency principle, the principle of effectiveness are characterized. Some recommendations are expressed; suggestions aimed at improving legal regulation of local taxation in Ukraine are grounded.

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# SOME ASPECTS OF THE IMPROVEMENT OF LEGAL REGULATION OF ADMINISTRATIVE ACTIVITY IN THE SEA PORTS OF UKRAINE

The article discusses some regulatory powers of state bodies in the exercise of management of seaports of Ukraine.

The article proposes reorganization of the state enterprise "Ukrainian Sea Ports Authority" into public institutions. Institution is organizational structure not involved in entrepreneurial activity. It is suggested to conduct works related to their activities at the expense of the appropriations allocated from the state budget or local budgets of administrative-territorial units.

The author believes that the exercise of commercial functions in the port should take place on equal terms for both public and non-public businesses. Thus, administrations should fulfill only public functions (control, provision of services on behalf of the state, etc.).

In this regard, the author proposes to amend the Law of Ukraine "On Ukrainian Sea Ports" and provides an idea of reorganization of "Ukrainian Sea Ports Authority" into public institution.

The article also observed that the appointment of the heads of branches of "Ukrainian Sea Ports Authority" should be attributed to direct authority of the head of the institution.

The author also notes that the State Inspection of Ukraine on Security of Maritime and River Transport is a central executive body that provides implementation of state policy in the sphere of security in maritime transport. It performs a specific function being responsible for safety of navigation at the national and international level, and therefore it should have direct authority over the main person who controls the safety of navigation on a local level – in the seaport. The author believes that appointed captains of seaports have the right to this particular authority.

It is concluded about the need for separation of the main commercial and administrative functions in public administration of sea ports. The administrative functions include: state property management and surveillance of the safety of navigation and compliance with laws, regulations, international agreements in the field of merchant shipping. The economic function is regulation of concession agreements, service vehicles, cargo and passengers.

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# PLACE OF STANDARDIZATION IN ADMINISTRATIVE AND LEGAL REGULATION OF ECONOMIC ACTIVITY IN UKRAINE

The article examines the legal framework of standardization, its place in administrative and legal regulation of economic activity. The opinions of scholars on the issue of administrative and legal regulation of social relations are investigated. Viewing standardization as a tool of state regulation and an integral component of the national system of technical regulation, which is governed by the Laws of Ukraine "On Standardization", "On Standards, Technical Regulations and Procedures for the Evaluation of Compliance" attention should be paid to its occurrence in the scope of public interest that exists in the state.

In Ukraine the economic activity is subject to administrative regulation by the state, where standardization is a means of direct administrative impact on business entities. It covers an extremely wide area of public activity, including scientific, technical, economic and legal aspects. By its nature, standardization is a means of direct administrative control over economic entities, which creates a dependence on the state bodies exercising control over the quality of products, goods and services. Its goal is to establish provisions for general and repeated use in order to protect life, health and property of the person, as well as environment.

The analysis of legislative acts, theoretical sources gave the opportunity to come to the conclusion that standardization as an administrative and legal means of regulation of the most crucial from the point of view of the state public relations has an important place in the mechanism of administrative and legal regulation of economic activity in Ukraine.

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# THE FUNDAMENTAL (THEORETICAL) PRINCIPLES OF THE CONCEPT OF "SOCIAL WELFARE STATE"

The objective of the article is to identify the main (basic) categories for formation of the concept of the social welfare state. The author concludes that these categories are: the idea of social justice, social rights of individuals and social policy.

Studying the content of social justice the author argues with other authors, emphasizing the impossibility of construction of social justice prior to social security or social support. The author also criticizes the position of those scholars who emphasize that social justice provides legal equality and political freedom of individuals. The above tasks, according to the author, are performed, probably, due to political justice. At the same time, the author proves her point of view on the close connection of social justice and the level of cultural development of society. As an intermediate conclusion the author formulates definition of social justice.

Other basic elements of the concept of social welfare state are recognized human and civil rights, which, in author's opinion, on the one hand, were formed on the basis of the idea of social justice, on the other – laid the necessary foundation for the development of social policy of the state, which recognized such rights themselves. The author strongly disagrees with those authors who do not recognize the status of "human rights" as social rights and those who see social rights in the light of the theory of "generations of rights". The author believes that social rights should be studied primarily from the standpoint of the theory of the legal status developed by G. Jellinek. The article also concludes that the social rights of man and the citizen are mainly subspecies of subjective public rights, which, however, does not preclude the existence of the group of social rights of private law nature.

As the result of the study of social policy author concludes on the need to distinguish social policy as such and activities towards its implementation. The study formulated the author's approach to the definition of the "social policy". Special attention is given to articles analyzing problems of social policy and its principles. Getting into discussion with other scientists, the author emphasizes, among other things, the inability of mixing or combining the principles of social policy with the principles of social welfare state. At the end of the article the author forms the list of principles of social policy, including: combination of state social

securities with a tendency to mobilize personal resources of the individual in solving social problems; focus on stimulating increase of motivation, its effectiveness and efficiency; promotion of active participation of non-state sector of economics and institutions of civil society in social programs and projects; incorporation of cultural, ethnic, gender, linguistic aspects during development and implementation of social programs and so on.

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# ABOUT THE BACKGROUND OF EMERGENCE, MODIFICATION AND TERMINATION OF ADMINISTRATIVE RELATIONSHIPS ORGANIZING CIVIL CONTROL IN PUBLIC ADMINISTRATION

According to S.L. Lysenkov and V.V. Kopieichykov in administrative law there are 2 groups of legal facts that establish, modify or terminate the relationship: the actions and events. In turn, acts as juridical facts are divided into legitimate and illegitimate. In our view, such an approach to the grounds of emergence, modification and termination of administrative legal relations though right, but in rather generalized form highlights the specificity of administrative legal relations. For proper coverage of this issue there should be more thorough and detailed research works.

As for misconduct as the basis of emergence, modification and termination of administrative relationships, it should be noted that scholars do not have a clear view on their classification.

The most common form of legal acts as the basis of emergence, modification or termination is legal acts of administration. According to V.B. Averianov, act of administration is the result of a formal expression of result of declaration of will of subjects of power exercised unilaterally in compliance with the prescribed procedure and aimed at the emergence of certain legal consequences.

Another basis of the relationship we have studied is the decision of the judicial authorities of Ukraine.

Summarizing the above, we believe that the grounds of emergence, modification, and termination of administrative relationships organizing public control in public administration are juridical facts, which in turn are divided into juridical acts (acts of management, judgments and organizational regulations) and legal actions.

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# PRINCIPLES OF PROFESSIONAL SAFETY OF GOVERNMENT OFFICIALS IN UKRAINE

Ambiguous are the views of modern scholars regarding the definition of "principles of professional safety of government officials". The issue is highlighted mainly in highly specialized literature which examines principles of professional safety of certain categories of government officials.

In our view, the principles of protection of civil servants are a system of output, management, basic ideas and regulations that form the basis of legal regulation by the state to ensure the necessary, proper, safe working conditions of government officials providing effective results of their work and timely fulfillment of duties.

In our opinion, it is expedient to identify the following principles of protection of government officials:

– absolute value of life and health of a government official;

– provision of an adequate level of social protection of government officials;

– responsibility of the head of the state agency or body of local self-government for the creation and maintenance of safe and healthy working conditions for government officials;

– compensation for civil servants in the event of work-related illnesses or accidents in the course of official duties;

– introduction of uniform standards for the protection of civil servants in all government agencies;

– systematic training of civil servants in the field of labor;

– combination of cooperation and consultation between the various public authorities on improving safety.

Like any objectively existing legal phenomenon, category of principles of protection of government officials has its own unique features. In view of this, it seems expedient to carry out analysis of this issue. Thus, in our view, the principles of protection of government officials have the following features:

1) they are necessary fundamental basis for regulation of the health of civil servants;

2) they are reflected in the legal acts of the labor legislation of Ukraine;

3) principles of protection of civil servants illustrate general trends and direction of the development of the industry;

4) their existence is objectively justified and mandatory for proper regulation in this field;

5) they are the necessary criteria for improvement of working conditions of government officials;

6) principles of professional safety of government officials are designed to establish an effective mechanism for effective work of employees in government agencies and local self-government.

In our opinion, this list of character-

istics of principles of professional safety contains generalized provisions inherent in the proposed categories and defines its place in the legislation on professional health and safety. This list is certainly not complete and may be regarded as a manifestation of an integrated approach to the analysis of any phenomenon.

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# UNAUTHORIZED ACTIONS AS A METHOD OF COMMITTING ADMINISTRATIVE OFFENCE

Today, one of the most important tasks of the administrative law science includes best practices of considered measures in suppression of unauthorized actions and elaboration of clear recommendations concerning correct application of norms of the Code of Ukraine on Administrative Offences. In this regard, in the development of the administrative law science investigation of the unlawful act as infringement on social relations protected by norms of the legislation on administrative offences is a high priority.

Based on the analysis conducted in article it is concluded that unauthorized actions as a method of committing administrative offence incorporates the following features: they are done of one's own free will, i.e. nobody and nothing forces person to do such actions; in the course of carrying out such actions the person defies opinion and desires of other people regarding the behavior option selected; they are realized without regulatory approval or in violation of prohibition, stipulated by applicable legislation.

According to legal confirmation, forms and goals of unauthorized actions can be divided into five groups each having unique features: 1) unauthorized abuse of rights or excess of power; 2) unauthorized performance of certain work requiring special knowledge, corresponding qualification and permission of relevant authorities; 3) unauthorized actions containing potential threat for legal order, connected with public safety provision in general and health of individuals in particular; 4) unauthorized use of tangible and intangible objects; 5) unauthorized acquisition (occupation) of tangible objects.

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# THE PERIOD OF TRAINING OF PERSON TO OBTAIN A SPECIAL RIGHT TO PRACTICE LAW

In the present article the regulations of organization and order of training to receive the advocacy certificate (issued by Bar Council of Ukraine dated 16.02.2013 № 81) had been analyzed in details. The article describes the steps of such training: 1) preparation for training; 2) application to bar council of the region; 3) appointment of the chief and sending to training; 4) training; 5) summing up the results of training; 6) assessment of results; 7) appealing against the decision issued by bar council of the regional; 8) prolongation of the training.

After analyzing all the steps (stages) the author states that trainee must not take part in every stage. Taking the above-mentioned in consideration it is offered to classify all stages in two categories: obligatory and optional. Stages are defined to be obligatory if participation of trainee in them is necessary for successful result of training. The stages are optional if participation of trainee in them depends on consummation of some obligatory stages without successful result.

It is emphasized that legal regulation of training program gives to trainees the possibility to become familiar with professional skills, to learn and to practice the knowledge acquired as a result of classroom training and to check person's preparedness to be lawyer.

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# CURRENT ISSUES OF JUDICIAL EXAMINATION OF ADMINISTRATIVE OFFENCES IN THE FIELD OF ENTREPRENEURSHIP

Analysis of revealed problems of judicial examination of administrative offences in the entrepreneurial activity allowed formulating specific proposals on improvement of the current legislation and legal practice. Firstly, given the specific offences in the field of entrepreneurship and the fact that protocols on relevant violations are drawn up by militia and state fiscal (tax) service, it is necessary to maintain constant communication between judges and staff of the relevant public authority, which will facilitate prompt and efficient proceedings in this category. It is also advisable to transfer authority to review cases on administrative offences in the areas of trade and finance to the competence of other public authorities (decisions of which can be appealed before the court hearing).

Secondly, it is advisable to supplement Part 1, Art. 185-3 of the Code of Administrative Offences of Ukraine and to enshrine responsibility for willful non-appearance of the offender in court. Participation of offenders in judicial examinations of administrative offences in the field of entrepreneurship will promote quick and objective consideration of relevant cases and provide educational (preventive) effect on the offenders themselves and other participants in the trial.

Thirdly, it is advisable to supplement sanctions of the articles of the CAO establishing liability for violations in this sphere of social relations with administrative penalties in the form of community service.

Fourthly, it is necessary to amend Chapter 22 of the CAO (in particular Articles 279 and 281 of the CAO) in respect of the protocol and video recording of judicial examination of administrative offences.

Fifthly, special attention should be paid to prevention and combating corruption that may occur in course of bringing to administrative responsibility and judicial examination of administrative offences in the field of entrepreneurship, which in turn determines the prospects of further research of the subject.

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# POSTGRADUATE EDUCATION AS AN OBJECT OF PUBLIC ADMINISTRATION IN UKRAINE

This article provides general analysis of postgraduate education as an object of public administration. The author suggests its definition and characteristics. In particular, it is offered to understand postgraduate education being an object of public administration as the institution of administrative law, the rules regulating social relations that arise during the implementation of the national education policy, management of network of postgraduate pedagogical educational institutions, organization of educational process and provision of appropriate educational services aimed to meet the needs of the state in qualified teaching personnel of high level of professionalism and culture that can competently and responsibly perform professional functions, introduce innovative practices and approaches to teaching in the educational process, promote socio-economic development of society.

Thus, the above allows defining common features of postgraduate education as an object of public administration. In particular, these features are:

1. Public nature, which is caused by the purpose and objectives of postgraduate education.

2. Postgraduate pedagogical education is an institute of sub-branch of educational law within the field of administrative law.

3. The object of regulation is social relations that arise in this area.

4. The subjects of relations are the administrative bodies and institutions of postgraduate education.

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# EDUCATIONAL INSTITUTION AS AN OBJECT OF PUBLIC INTERNAL CONTROL IN EDUCATION

Today higher educational institution, in accordance with Art. 1 of the Law of Ukraine "On Higher Education" of 01.07.2014 № 1556-VII, is defined as a separate institution which is a legal entity of private or public law, acting in accordance with a license on conduct of educational activities at various levels of higher education, which conducts scientific, technical, innovative and/or methodological activities, provides the organization of educational process and delivery of higher education, postgraduate education to people according to their vocation, interests and abilities.

Apparently, distinction of educational institutions is performed. Although, the variants of activities possible for exercise are specified. At the same time, there is a separation between educational activity and scientific, technical, innovative and/or methodological activities. All these activities are defined as those exercised by educational institutions without distinction between educational and research institutions. The concept "educational institution" is not specified in the text of the Law of Ukraine "On Higher Education" of 01.07.2014 № 1556-VII at all.

Firstly, the author considers it inappropriate to define educational institution as an institution that carries out along with educational research, scientific and technological, innovation, and methodical work. Even the appropriate ministry is entitled "Ministry of Education and Science", which indicates the existence of two components "educational" and "scientific" in the management of the relevant area.

Secondly, it is appropriate to use the notion "educational institution" in implementing legal regulation of management of education in Ukraine. It is considered appropriate to mark the same agencies of education and science of Ukraine, carrying out additional activities (scientific, technical, innovative and/or methodological activities) along with educational, through two components such as educational and research, educational and innovation institutions and so on.

Considering the above, the author notes that when describing the system of education and science as an object of state control, the notion of educational institution as a unit of appropriate system is used – institution, which is a legal entity of private or public law, acting in accordance with a license on conduct of educational activities at various levels of higher education, which conducts scientific, technical, innovative and/or methodological activities, provides the organization of educational process and delivery of higher education, postgraduate education to people according to their vocation, interests and abilities.

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# PROFESSIONAL MOTIVATION AS A PREREQUISITE FOR EFFECTIVE PROFESSIONAL WORK OF PROSECUTOR

Overall analysis of special scientific literature makes it possible to conclude that there is no comprehensive research on the topics of the motivational structure of prosecutor's office, as well as other law enforcement agencies of Ukraine. This situation can not be considered satisfactory, because the work of relevant categories of workers due to the specifics of the tasks assigned to them by the current legislation of Ukraine does not take into account the features of professional motivation.

Thus, professional motivation of personnel of prosecutor's office is conditioned by their extremely important activity for society as a whole and for every citizen in particular. This in turn requires the training of professionals who would have a high level of motivation and the following distinguished features:

1) persistence in achieving goals;

2) dissatisfaction with the achieved results;

3) tendency to admire chosen profession;

4) feeling of joy due to achieved progress;

5) dissatisfaction with easily achieved success;

6) lack of unhealthy spirit of competition;

7) willingness to help.

On the basis of general knowledge of the motives and motivation, as well as the professional motivation of employees in general and their individual groups, we believe that professional motivation of prosecutors in Ukraine should be determined as a complex of various impulses that activate human activities in professional field – the field of activity of prosecutor's office of Ukraine – in order to fulfill its tasks and functions and to achieve high results and parameters of work through effective implementation of their duties, self-realization and self-improvement, etc., which is based on the impact of various external and internal factors.

Thus, given this definition we can derive the following features of professional motivation of prosecutors:

1) special sphere of activity – law enforcement and prosecution.

2) system of different motives, i.e. a large number of forms of workers' stimulation of different nature and value;

3) focus on activation of human activities, i.e. mobilization of physical, creative, intellectual and other resources;

4) it is carried out in order to achieve the desired result – success;

5) it is determined by a complex of internal and external factors that are interconnected and interdependent in the relationship, and correlate based on the dominance of some of them.

Analysis of issues of motivation has shown that this concept is also difficult

and complex and requires careful and thorough research. However, in this research work we found out its meaning, considered the relationship with other related categories and criteria for their distinction. The author also investigated the function and types of motivation, its structure, etc., which together enabled the author to provide a definition of motivation. There have been studied the professional literature and determined that a large number of definitions of this category is determined by the fact that motivation is studied by the different human sciences, which, among other things, have different views, theories, concepts. This situation complicates the perception and understanding of the phenomena at issue.

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# PREDICTIVE FUNCTION OF THE ADMINISTRATIVE LAW SCIENCE

Consideration of predictive function of the administrative law science is closely connected with solution of other theoretical questions significantly affecting disclosure of its essence and effectiveness of its implementation. For example, it is impossible to set clear guidelines of changes in the administrative law doctrine without defining goals of the administrative legal regulation, as well as it is impossible to determine the volume of those social relations not settled yet by the administrative law, but requiring appropriate regulation that might be predicted without specifying the object and the subject of the administrative legal regulation.

Based on the analysis conducted in article it is concluded that the predictive function of the administrative law science represents prediction of means for improvement of public authorities' activities and forecasting of changes in the administrative legal regulation that will facilitate solution of the current theoretical issues, resolution of questions of law enforcement and will contribute to the systematization of contradictory knowledge about the administrative law as a branch of law. Among significant problems hindering implementation of this function are the following: non-recognition of the sectoral science as a subject of administrative legal research, and as a result, a high level of implementation of predictive function at a subjective level, and its limited implementation at an objective level; absence of criteria for evaluating effectiveness of implementation of the administrative law science's predictive functions (scientists do not care about issues regarding implementation of their prognostic opinions); today predictive function of the administrative law science is closely connected with the existing strategic goals of the administrative legal regulation, which certainly leads to a high rate of predictive errors, i.e. predictions will be more scientifically grounded and realistic, if they focus on tactical and operational objectives of the administrative legal regulation.

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# AS TO THE ISSUES OF OPTIMIZATION OF PUBLIC CONTROL OVER THE ACTIVITY OF PROSECUTION AGENCIES

In our opinion, the President of Ukraine has to appoint and dismiss the Prosecutor General of Ukraine, thus making it only in the manner and form specified by the legislation of Ukraine. We believe that the post of the Prosecutor General of Ukraine bares political nature, as well as composition of the government.

We believe that the content of the report of the Prosecutor General of Ukraine to the Verkhovna Rada of Ukraine should be much broader and not only apply to state of legitimacy in Ukraine. Thus, we believe that it is also necessary to report information about the activities of centralized system of prosecution agencies of Ukraine, which, in turn, will provide Members of Parliament with real awareness of problems, gaps and future prospects.

In literature there is a standpoint that for more effective operation of the Ukrainian Parliament Commissioner for Human Rights it is necessary to enshrine in legislation posts of its deputies, to determine their functions and powers, as well as to provide the procedure for appointment of officials for these posts similar to the appointment of the Commissioner.

Carrying out optimization of public control over the prosecution, some fundamentally important aspects should be noted. Firstly, the optimization of each subject can not be made independently from optimization of other subjects of public control. Otherwise, such a reform would be episodic and fragmented, which in turn would cause relatively low efficiency of each individual subject of public control. Secondly, making optimization of subjects of public control it is necessary to remember about the system of moderations and balances to prevent the concentration of a significant amount of power in the hands of one state agency or individual officers. Moreover, it is clear and obvious that the process of optimization of public control over the activity of prosecution agencies is inseparable from the reformation of the model of general prosecutor's office of Ukraine.

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# CONCEPT OF REGULATORY AND LEGAL SUPPORT OF CIVIL SERVANTS

Considering the legal provision of the civil servants it is necessary to remember that the state pre-defines the functions of civil servant, in contrast to usual employment of workers whose functions depend on the wishes and requirements of the employer.

We consider it necessary to point out that today the scientific literature does not provide a legal definition of "regulatory and legal framework of civil servants", but there are approaches to disclosure of key aspects of civil servants in the legal provisions.

On the basis of the above, definition of "regulatory and legal support of civil servants" is provided. Thus, the regulatory and legal framework of civil servants is a process of integrated application of all laws and legal acts in the field of service and employment, on the basis of which the state establishes a mechanism to ensure these relationships, allowing civil servants to perform their work at the proper level within the established powers and for remuneration determined by the state budget.

Having examined the concept of "regulatory and legal support of civil servants" it is expedient to determine existing scientific approaches to basic characteristic features of the service and labor relations.

This issue requires a comprehensive approach, so we consider provisions of scientists regarding the characteristic features of public service. Thus, H.V. Atamanchuk describing public service as one of the most important spheres of governance and as a social phenomenon, indicates the following features: firstly, the state apparatus is a complex hierarchical structure, in which hundreds of thousands of people occupy various functional positions and perform different social roles. Secondly, the apparatus manages, directs, organizes and regulates social relations. Thirdly, in relation to society, representative government, and citizens, the apparatus implements a service function. A.M. Sliusar sees professional activity as one of the signs of public service. This means that dismissal of the civil servant takes place according to professional basis, and public service is the main place of their work. This understanding suggests that a civil servant, in terms of labor law has specific differences from normal employee. In particular, K.I. Kenik concludes on the following peculiarities differentiating civil servants from other employees:

– They hold post only in government bodies;

– They carry out authoritative activities (organizational, managerial, leadership, control), therefore, they are endowed with the appropriate authorities and organizational and administrative responsibilities;

– They can use state coercion measures.

Thus, based on the above analysis, we can state that the regulatory and legal support of activity of civil servants has its specificity, is characterized by a special legal nature and occupies a special independent place. Regulatory support of activity of civil servants is socially necessary and fundamental in both theoretical and practical meaning, because only through it, there are clear legal provisions that affect labor relations in the public service, form and reformed them with the purpose of improvement. Due to high quality regulatory and legal support of civil servants in the state will be established skilled personnel of the government, which will serve the legal, social, economic, political and cultural benefit of Ukraine.

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# OVERVIEW OF LEGISLATION OF UKRAINE IN THE FIELD OF HYDROMETEOROLOGICAL ACTIVITY

One of the main conditions for effective regulation of hydrometeorological activity is improvement of the regulatory framework in this area, its harmonization with international law. The scientific article provides a detailed analysis of normative legal acts regulating the field of hydrometeorological activity. The author states that the legislation on hydrometeorological activity can be divided into two parts – general law and special law.

The author determines that the development of the democratic Ukraine also causes increasing role of law because it creates the necessary conditions for this: orderliness, organization and dynamics of social relations. This directly applies to public administration, which embodies the unity of practical and management structure. Therefore it is necessary to fully apply the power of legal measures, and above all, the regulatory importance, not only for securing management system, but also for its targeted enforcement.

Revealing the system of law regulating the scope of hydrometeorological activity, we believe that regulations on hydrometeorological activity depending on the entity that issued it can be divided into: 1) acts of the Verkhovna Rada of Ukraine; 2) acts of the President of Ukraine; 3) acts of the executive authorities; 4) acts of local authorities.

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# PRINCIPLE OF AVOIDING CONFLICT OF INTEREST WITHIN ADVOCACY

Advocacy referring to avoiding conflict of interest is researched in the article. The essence of competitive interest as a legal phenomenon is revealed in light of legal conflict resolution studies. It is stated that conflict of interest within advocacy may be: vertical, which occurs between interests of the lawyer and its client; horizontal, which occurs between clients' interests; mixed, which refers to conflicts between both clients' interest and client's and lawyer's interest; real or imaginary conflict of interest; evident conflicts are obvious to all the parties to a case; unevident conflicts are unobvious for the parties to a case until the consequent statement is disclosed by the information owners. The legal position of the national legislator on definition of conflict of interest in advocacy is reflected in the article. The standpoint of international community concerning the essence of the phenomenon is analyzed herein. Defects of legislative regulation of the conflict of interest definition are stated in the article. Relevant amendments to Ukrainian legislation are proposed on the purpose of suitable legislative implementation of the conflict of interest within advocacy. Considering exposed practical limitation it is stated how the proposed amendments might impinge on completeness of realization of the principle of avoiding conflict of interest within advocacy in the regulatory enforcement activity. Author's definition of principle of avoiding conflict of interest within advocacy is provided herein and, according to it, principle of avoiding conflict of interest is ascertained by statute grounds of legal practice, which limit attorney's right to provide services to client, interests of which contradict to protected by law interests of another client, who has been or is being provided with legal services, except for the written consent of the clients, whose interests might be violated or contradict the interest of the lawyer itself, its close relatives, family members or partners.

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# PECULIARITIES OF ADMINISTRATIVE LEGAL REGULATIONS, DETERMINING THE ACTIVITY OF HIGHER EDUCATIONAL INSTITUTIONS WHICH PREPARE SPECIALISTS FOR THE MERCHANT FLEET IN UKRAINE

This article is devoted to peculiarities of administrative legal regulations, determining the activity of higher educational institutions, which prepare specialists for the merchant fleet in Ukraine. Corresponding aspects of their realization in the process of forming the system of training of specialists for a definite area are analyzed.

In the theory of maritime administrative law there is no unified understanding of the administrative legal regulation, which determines the activity of higher educational institutions, which train specialists for the merchant fleet of Ukraine. In this connection, the aim of this article is to analyze administrative legal regulations, determining the activity of higher educational institutions, which train specialists for the merchant fleet in Ukraine.

Higher educational institutions, which train personnel for the merchant fleet in Ukraine, are participants of the administrative legal relations, because they have rights and obligations, fixed and provided by corresponding administrative legal regulations.

On the basis of features of higher educational institutions, which train specialists for the merchant fleet of Ukraine, as subjects of the administrative law, we may give definition to the term "administrative legal regulations, determining the activity of higher educational institutions which train specialists for the merchant fleet in Ukraine".

Administrative legal regulations, determining the activity of higher educational institutions, which train specialists for the merchant fleet in Ukraine are obligatory rules of behavior, stated and protected by state and aimed to condition public relations, which appear and develop in the area of state management connected with realization of the state policy through the higher educational institutions in the area of training and professional development of maritime specialists.

The stated administrative legal regulations belong to the sub-area of administrative law – maritime administrative law.

Forming the administrative legal regulations, which regulate the activity of higher educational institutions, which train specialists for the merchant fleet in Ukraine, it is possible to divide them into two levels: global and national.

Key element for implementing the stated regulations of the administrative law is providing absolute adherence to them.

That is why realization of the administrative legal regulations for educational institutions has special characteristic features typical not only for this category of institutions, but also for the maritime administrative law in general.

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# FREEDOM OF PEACEFUL ASSEMBLY IN THE EXPERIENCE OF DEMOCRATIC PROCESSES IN THE USA

Right to peaceful assembly and procedure of its formation and development in the United States of America are considered in the article. The article outlines the main periods of American history in the context of different approaches to the notion of freedom of peaceful assembly.

The focus of the article is the right, delineated in the First Amendment to the United States Constitution, "of the people peaceably to assemble". The author begins by tracing the central role that the right of assembly played historically in political struggles and in public perceptions of the First Amendment, through the middle of the twentieth century. He then traces the gradual transformation of the right of assembly, explicitly listed in the text of the Constitution, into a non-textual right of "association" during the 1940s and 1950s, as well as the narrowing of the right of association, combined with the complete abandonment of assembly as an independent right during the period beginning in the early 1960s.

The author pays particular attention to three characteristics of the right of assembly. First, groups invoking the right of assembly have usually been those that dissent from the majoritarian standards endorsed by government. Second, claims of assembly have insisted on a political mode of existence that is separate from the politics of the state. Finally, practices of assembly have themselves been forms of expression – parades, strikes, and meetings, but also more creative means of engagement like pageants, religious worship, and the sharing of meals. The diverse groups that have gathered throughout American nation's history embody these three themes of assembly: the dissenting, the political, and the expressive.

The author illustrates how the freedom of assembly faces an amount of challenges on its way. It encompasses such seminal moments as the debate over the Democratic-Republican Societies of the 1790s, the use of public meetings as a form of democratic activism in the Jacksonian era, the efforts of southern states to suppress assemblies of slaves and free blacks throughout the antebellum period, and the embracing of public assemblies in the North during this period by both the abolitionist and burgeoning women's rights movements. Moreover, the right of assembly continued to play a central role in social movements well into the twentieth century, including the suffrage movement, the Civil Rights movement, and the radical labor movement epitomized by the Industrial Workers of the World.

The author comes to the conclusion that comparative analysis will make it

possible to compare conditions, fundamental differences and similar features in the formation and evolution of the right to peaceful assembly in the United States and in Ukraine. Eventually using the gained knowledge in the process of building a functioning democracy in our country would be effective.

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# PUBLIC FUNDS: CONCEPT, CHARACTERISTICS AND LEGAL NATURE

The article investigates the modern system of public finance, as well as definition, characteristics and legal nature of public funds.

In the first part of the article the author defines the notion of public finances, analyzes the main elements of the system of public finance. It is determined that public finances are mobilized and allocated to meet the public financial interest, which is divided into public, social and territorial interests.

In the second part of the article the author determines that public funds are divided into different shares – monetary funds. Distribution of finance for centralized and decentralized funds is determined by the need to meet various different social needs.

The author describes the concept and characteristics of central funds, analyzes the essence of the state budget and local budgets, as monetary funds, and proposes the author's definition of budgeting. The author investigates the legal nature of social purpose funds that are divided into public budgetary funds, public extra-budgetary funds and funds of obligatory medical insurance.

In the third part of the article the author analyzes the views of researchers on the concept and content of decentralized monetary funds. The author defines the main features of decentralized funds. Author proves that the decentralized funds are generated, distributed and used by state and municipal enterprises, institutions, organizations and their associations, at their own expense and budget allocations, designed to meet the public interest.

The author concludes that the current system of public finance in Ukraine foresees the creation of centralized and decentralized funds, which, maintaining relative autonomy, are strongly correlated with each other.

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# TYPES OF ADMINISTRATIVE PROCEDURES IN SCIENTIFIC FIELD

The article provided the author's definition of administrative procedures in the field of science, described their main types. The research is stipulated by the fact that in European integration policy administrative procedures play an important role in research activities to ensure the effective functioning of management, adequate operation of all state institutions directly or indirectly implementing the state policy in this area.

The aim of the paper is to formulate the author's concept of administrative procedures in the field of science, as well as the characterization and classification of their main types.

It is concluded that the administrative procedures in the field of science is a very important element for the proper functioning of every authorized entity, the purpose of which is implementation of officials' compliance with procedures for making appropriate management decisions necessary to ensure consistency in their actions, increasing the effectiveness of public power.

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# INDIVIDUAL SUBJECTS OF LEGAL RELATIONS CONCERNING MIGRATION

Subject composition of legal relations concerning migration is peculiar to public relations, because on the one hand the participants always are such individual subjects as migrants (citizens, foreign citizens and stateless persons); on the other hand the public authorities, which have powers of authority. Given the nature of legal relations concerning migration and the possibility of participation of a wide range of subjects in these relations, it is impossible to describe each of them within this article. Therefore, we propose to focus on individual subjects.

Within this article we consider such individual subjects of legal relations concerning migration as: refugees, persons who need additional protection, persons who need temporary protection.

The author draws attention to conditions that enable the recognition of a person as a refugee, and concludes that the absence of at least one of them completely eliminates it. These conditions are: absence of Ukrainian citizenship; intend to be recognized as a refugee in Ukraine outside the country of person's nationality; presence of circumstances that led to the forced departure from the country of his/her nationality; inability or unwillingness to use the protection of the country of his/her nationality.

Separately the author considered that "new category of migrants", based on the conditions defined in the Convention relating to the Status of Refugees of 1951, can not be classified as refugees or persons in need of additional protection. In particular, the analysis of the terms "immigrants", "forced migrants" or "internally displaced persons" is carried out.

The author concludes that migration is understood only as moving outside the country of one's nationality (external spatial displacement), which is why migrants should be understood as foreign citizens and stateless persons. This statement means the inability to consider in the plane of legal sciences of the type of immigrants legal status of which would remain unchanged.

# CIVIL AND ECONOMIC LAW AND PROCEDURE

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# INVESTING ACTIVITIES AS A SUBJECT OF LEGAL REGULATION

Legal regulation of investment activity is inseparable from the legal regulation of the economy. The objects of state regulation of the economy is the national economy as well: Economic subsystem (the regional economy, economic systems, industries, sectors, stages of reproduction); socio-economic processes (economic cycles, demographics, employment, inflation, technological change, business environment, etc.) relations (industrial, financial, credit, foreign trade, rent, etc.); markets (of goods, services, investments, securities, currencies, funds, capital etc.).

The object of legal regulation responds to the impact of the subject. If the effect remains unnoticed, the management is essentially absent. An object can change as well as not change its behavior. Such changes may correspond to the will of the managing subject – reaction of consent, submission (citizen timely represents a declaration of his income in tax department), but also may not respond (reaction of disagreement), acquiring the form not only of disobedience, but also of active opposition.

The object of legal regulation of investment relations of civil law is, basing on the principle of discretion, private law relationships that develop between the investor (authorized person) – on the one hand, and the other members of the investment activity – on the other, in the course of practical action on investments in a particular type of object specified by contract. The object of legal regulation of administrative legal relations is social relations provided by mandatory requirements and based on formal equality and developed between investor (authorized person) – on the one hand, and government agencies and their officials – on the other, in the implementation of investment activity.

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# PROBLEMATIC ISSUES OF SEX CHANGE IN FAMILY LAW OF UKRAINE

Every year the number of countries where same-sex marriage is allowed is growing. The problems caused by biological sex change and increase in the number of same-sex marriages remain relevant in Ukraine.

Article 21 of the Family Code of Ukraine calls the marriage a union between a man and a woman. Securing heterosexuality as an obligatory prerequisite to marriage, Family Code of Ukraine does not include violation of this condition as a ground for invalidation of marriage regulated by the Article 38. The issue of the relationship between the categories of "biological sex" and "gender sex" of individual is observed. It is established that these concepts do not always coincide. Mismatch is observed among persons with different sexual orientation – homosexual and transgender people.

In fact, family law of Ukraine does not prohibit marriages with persons who have changed their sex. At the conclusion of the marriage the requirement of Article 21 of the Family Code of Ukraine on the possibility of marriage between a man and a woman is legally observed.

In the legislation of Ukraine question about the parenthood of the child, the father (mother) of which changed sex remains unresolved. Change of sex by one parent and respective change of passport is not a reason to change the data on the parents in the birth record of the child. Thus, the child is legally the child of its biological parents.

Moreover, there is still the problem of the existence of the marriage in case of sex change by one of the spouses. As Ukrainian legislation does not mention sex change among the grounds for termination of marriage, the marriage exists if both of the spouses are interested in preserving the family. However, in this case there is a conflict of regulations that on the one hand marriage can only be a union between a man and a woman, on the other hand – the sex change does not terminate the marriage registered in accordance with Article 104 of the Family Code of Ukraine.

In this case, we believe that the only possible way out of this situation is amending Part 1 of the Article 104 of the Family Code of Ukraine, by adding such a ground as sex change into the list of grounds for termination of marriage. Consequently, the Article will have the following meaning: "A marriage is terminated in case if one of spouses dies, changes sex or is declared dead".

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# LEGAL PROTECTION OF INDUSTRIAL DESIGNS IN THE REPUBLIC OF BELARUS (HISTORICAL ASPECT AND TRENDS OF DEVELOPMENT)

The main stages of the development of legislation on industrial designs during the Soviet period and the period of independent Belarus are reviewed in the article. The analysis of the main documents regulating legal protection of industrial design which were passed during the Soviet Union period is given herein.

In particular, the article specifies peculiar features of the Decree of Council of Ministers of the USSR "On Industrial Designs" 1965; Ordinance of the Council of Ministers № 539, which affirmed the "Regulations on Industrial Designs" 1981; the USSR Law "On Industrial Designs" of 1991.

The analysis of the above documents allows viewing the gradual expansion of the range of products that fall under the terms of legal protection as industrial designs.

The article describes the main sources that contain legal norms for the protection of industrial designs in the Republic of Belarus. Some drawbacks and peculiarities of the Act of the Republic of Belarus of 1993 "On Patents for Industrial Designs" are also indicated here. The author specifies the role of the Civil Code of the Republic of Belarus in the protection of industrial designs.

The author conducts a critical analysis of the Law of the Republic of Belarus "On Patents for Inventions, Utility Models, Industrial Designs" of 2002 and characterizes major changes relating to the protection of industrial designs in connection with the adoption of the law. Thus, these changes affected the conditions of patentability of industrial designs (the requirement of "industrial applicability" was annulled). The current law does not require the examination of an application for an industrial design, and also establishes a smaller list of documents that must be included in the application for an industrial design.

Considering these peculiarities, the tendency of mitigation of the requirements for the protection of products as industrial designs under the laws of the Republic of Belarus was remarked.

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# PROTECTION OF INTELLECTUAL PROPERTY AND THE INTERNET

The problem of fighting with violations of copyright and related rights for Ukraine is an important, relevant and comprehensive. Its solution largely determines the preservation and development of intellectual capacity, cultural heritage, increasing the international prestige and reducing criminal tensions in the country.

Global information networks are inseparable from the life of society, complex social, informational and legal phenomena. On the Internet, you can place any information, as well as literary and musical works, trademarks, service marks and other intellectual property. Of course, the legislation of Ukraine and the modern technical facilities provide opportunities to the authors to protect their rights, such as known to all copyright symbol ©, watermarks, electronic digital signature, special programs, which allow attaching to a file hidden information about the author. One of the ways of protecting the rights of the author on the photos, videos, audio files, text documents, and even websites in general, is also a deposit of works in the depository and registration of rights to them. Author or copyright holder has to deposit page of the original text, image, design of the site and get a certificates of this act. In case of illegal use of the works, which were posted on the Internet, the author possessing a certificate of their rights will always be able to prove their origin and submit a claim to the offender.

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# PRINCIPLES OF TRANSNATIONAL CIVIL PROCEDURE AND ITS INFLUENCE ON CIVIL PROCEDURE

Union of European states necessitated the harmonization of legislation of the states, in particular, civil procedural law, in order to improve its quality and simplify civil proceedings. Active participation in the harmonization work involved representatives of other countries, in particular, extremely important for the development of science of civil procedure draft principles of cross-border civil process, was the result of joint work of scholars around the world.

Decade was spent on preparation of the principles, which became one of the greatest achievements of harmonization of civil procedural law and the basis for the project of development of the European rules of civil procedure of last years – workshop titled "From Transnational Principles to European Rules of Civil Procedure", and increased harmonization processes in the EU and facilitated European integration of Ukraine, determining our scientific interest.

The principles for the development of modern science of civil procedural law are highly important, as they clearly define guidelines for further reform of the rules of civil procedure in Europe and the world, and the need to implement them in the national legal system. The most successful way to implement them seems to bring the judicial practice into line with the principles, especially having the consent of the parties of proceeding. Thus, general European ideas of modern efficient fair civil justice, which unite all European countries, will be gradually implemented in the process of convergence and harmonization of civil procedural law.

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# THE OCCURRENCE OF THE LEGAL RELATIONS OF SOCIAL RENTED HOUSING

Relationship of social rented housing, as well as any other relationship, is not a static legal phenomenon. Starting point to study the dynamics of the relationship of social rented housing is the time when it just occurred. The occurrence of relationships of social renting is often associated with the signing of the contract. However, in our opinion these relationships occur much earlier. It is considered that the occurrence of social relationships of social rented housing consists of two stages. The first stage is pre-contract relations that are complex. This means they are an organic combination of both administrative and private law elements. In addition, these relations can be characterized as complex organizational relations because they are the basis of occurrence and existence of proprietary contractual relationships of social renting. Defined pre-contract relations are a necessary precondition for the conclusion of the contract. Thus, the second step is the direct conclusion of the contract of social renting.

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# USING OF SIMILAR (IMITATED) COMMERCIAL NAME IN THE SPHERE OF INTELLECTUAL PROPERTY RIGHT

Modern economical conditions based on competitiveness, necessity to promote goods and services, the dynamic development of market technologies require popularization and unambiguous recognizability of a subject of entrepreneurial activity, its goods, works and services. Therefore it is difficult to assess the necessity of a reliable legal regulation of individualization means of the participants in civil circulation, goods and services.

Analysis of scholars' works makes it possible to assert that proving similarity of commercial, company name is quite difficult. The situation becomes even more difficult because of the fact that the legislation of Ukraine does not contain provisions, methods, precisely defining criteria of establishing similarity of commercial, company names.

The objective of this article is to establish similarities of commercial (company) name, the degree of similarity, to define criteria for establishing this similarity, and the use of commercial (company) name concerning heterogeneous kinds of activity.

The author makes a conclusion that definition of similarity, identity indicates that compared elements of commercial, company name should be clearly or maximum equal. Identity, similarity between disputable names occurs when the company uses reproduction of elements which compose other commercial, company name without changes or additions. However, while establishing identity (similarity) of commercial, company name the degree of average consumer's awareness, qualification of identity of goods (services), kind (type) of products, their consumer properties and functionality, type of material they are made of, range of consumers, traditional or preferred way of using goods and other indicators must be considered.

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*University of Modern Knowledge*

# SECURITY RELATIONS IN CONTRACT LAW: THEORETICAL ISSUES

The problem of civil legal relationship is the basis for the theory of civil law. At all stages of the development of legal science this issue received considerable attention of the legal scholars. However, in Ukrainian legal literature there is no worked out well-established theoretical definitions of highly important problem: the formation of law enforcement and human rights policy in the field of contract law to secure and protect the property rights of individuals and legal theory of security in this sub-sector. Therefore, the aim of this article is the theoretical foundation of the emergence of contractual obligations of legal protection as a particular type of civil relations, not identical with the relations of protection and coverage of its characteristics. The article analyzes the theoretical achievements of Ukrainian and Russian scholars on understanding of legal protection and presence in contract law of the institute of legal protection as a particular type of civil relations, and reveals their relationship with legal relationship of security. The purpose of civil enforcement of legal obligations in the field of law is: to create legal framework for public-private contractual arrangements to ensure the parties' property rights protection; to ensure the smooth implementation of the rights of the parties in protection of their property rights through pre-contract disputes on the interpretation of contracts, terms, implementation, maintenance of obligations of the parties, etc.; possibility of control over actions of one party by the other and vice versa in order to protect their property rights and prevent their violation. Result of the research is the formulation of the author's definition of security relations in the field of contract law, which can be defined as socio-contractual relations determined by standards of contractual character, arising on the basis of law, agreements between the parties or authorized persons, and aimed to ensure the smooth implementation by parties to the contractual relationship of their respective property rights and interests by removing barriers and creating conditions to prevent illegal encroachment on their property and property rights, and their possible effective protection in the event of rejection, abuse or challenge.

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# THE RIGHT OF CONSUMERS TO BE INFORMED IN THE REPUBLIC OF MOLDOVA

The development of an information support for consumers is based on the presence of special methods of education in the legal protection of their rights. A major role in informing and educating consumers, of course, is performed by legislation, which contains provisions on the directions of state policy in the field of consumer protection.

Information distribution and education of representatives of consumer relations in our modern world is an urgent problem. Unfortunately, the consumer is not always ready to „stand up" to his counterpart, experienced and economically strong, being illiterate in the field of law.

Thus, summarizing the questions at issue, the following conclusions can be drawn:

1. The consumer is a natural person who has the intention to order or has already purchased or is only ordering, purchasing or already using these or other products or services for its own needs, which are not in any way related to business or professional activities.

2. Protection of the interests of consumers is focused on the following rights:

– the right to security;
– the right to information;
– the right to education;
– the right to choose;
– the right to be heard;
– the right to have the basic needs met;
– the right to compensation for demage;
– the right to healthy encironment .

3. In the protection of the rights to information and education, consumers have a right to accurate, reliable, complete information on the characteristics of certain products or services, which in turn can allow a sensible choice from the entire range of products or services according to their personal interests. Education in the field of consumer rights protection is respectively achieved through the development of specific methods informing consumers about their rights, „instructions" how to protect their rights, organizing various campaigns, dissemination of information through relevant literature, as well as through the media.

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# FORMS OF ENTREPRENEURSHIP

Entrepreneurship as a professional activity is aimed not at single but at systematic profit acquired in a way not forbidden by law. This implies that entrepreneurship is a systematic, stable, organized economic activity, which is aimed at achieving a final result focused on the further development and expansion.

However, it should be noted that entrepreneurial activities are aimed at making a profit, which is achieved through certain forms of economic activity. Depending on the content of entrepreneurship the following forms of business are distinguished:

1) manufacturing business, i.e. economic activity aimed at the production of goods, works and services, gathering, processing and provision of information, creation of spiritual values, etc. (subject to subsequent selling to consumers);

2) trade (commercial) business activity, i.e. a business activity in which the entrepreneur acts directly as a merchant, salesman who sells (in shops, markets, exchanges, exhibitions, sales, auctions, shopping centers, trading deports and other trade establishments) to consumer finished goods purchased by him at a lower price from other individuals (this covers all activities directly related to the exchange of goods for money, money for goods or goods for goods);

3) financial and credit business activity, i.e. a specific form of licensed commercial enterprise, which uses currency, national money and securities (stocks, bonds, bills, etc.), sold by a subject of entrepreneurship to purchaser or given him on credit, as an object of sale;

4) insurance business activity, i.e. a licensed economic activity of the entrepreneur (the insurer) under the law and the relevant contract of insurance, which is expressed in guaranteeing compensation as a result of an unforeseen disaster (loss of property values, health, life, etc.), for a fee (insurance premiums) on the basis of the treaty with insurance consumers; payment of insurance payout to the counterparty, in the event of a disaster (and for other specified reasons).

5) mediation business activity, i.e. economic activity of the entrepreneur, which does not produce or sell goods, but acts in commodity-money transactions as an intermediary, but for a fee represents the interests of the producer or the consumer, not being such one itself (in fact, the mediator "connects" two or more potentially interested parties in committing the transaction). Thus, summing up the above, it should be noted that the person carries on business regularly, consistently organized in order to eventually make a profit, which is achieved through certain forms of economic activity: a) manufacturing business; b) trade (commercial) business activity; c) the financial and credit business activity; d) insurance business activity; e) intermediary business activity.

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# LEGAL REPRESENTATION AS A FORM OF LEGAL ASSISTANCE IN CIVIL PROCEEDINGS

Development of a national judicial system and the effectiveness of justice in civil cases depend on the improvement of legal regulation of individual institutions of civil procedure and complex solution of problems existing in the modern procedural science and jurisprudence. One of these institutions is a legal representation, the issues of which have been considered by Ukrainian and foreign representatives of science of civil procedural law, including E.V. Gusiev, O.H. Drizhchana, V.M. Ivakin, I.A. Pavlunyk, Y.A. Rozenberh, S.O. Khalatov, S.A. Chvankin, V.M. Sherstiuk, M.Y. Shtefan.

According to Article 59 of the Constitution of Ukraine everyone has the right to legal assistance and is free to choose the defender of his or her rights. This constitutional requirement has a general nature and applies to the protection of the rights in criminal and in civil, commercial and administrative proceedings. European Court of Human Rights has repeatedly drawn attention to the fact that the effect of item "c" claim 3 Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms is not limited to criminal proceedings and is subject to an expansive interpretation, because the right to legal assistance is part of the right to a fair trial, which may induce the state to provide compulsory legal assistance in civil cases because of the complexity of the process or in cases where assistance of a lawyer is necessary to ensure effective access to justice.

In the theory of civil procedural law and judicial practice the possibility of participation in civil proceedings of foreign lawyers has been the subject of long-term discussion. Given the rules of civil procedure law, defining the range of persons who may be members of the court (Art. 39, 40 of the Civil Procedure Code of Ukraine), subject to statutory restrictions on the right to perform representative functions in the courts and the lack of any restrictions based on citizenship (Article 41 of the CPC), participation of foreign lawyers in civil proceedings is admissible. This approach to resolve this issue is introduced in the Law of Ukraine "On the Bar and Legal Practice". Status of foreign attorney determines certain characteristics of legal practice of such persons in Ukraine. Thus, the lawyer of a foreign state may exercise legal profession in Ukraine, if he/she is included in the Unified Register of Advocates of Ukraine in the manner prescribed by law (Part 4 of Article 4 and Article 59 of the Law of Ukraine "On the Bar and Legal Practice"). Foreign attorney without registration in that register is not allowed to practice law in Ukraine.

In summary we note that in terms of the constitutional right of individuals and legal entities to receive effective legal assistance actually important is priority development of legal representation in court on a professional basis, which serves as the basis for its classification into professional and non-professional. Based on the content of legal assistance, its provision in the form of legal representation in court should be exercised by lawyers, including foreign ones, and other experts in the field of law.

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# FEATURES OF CLAIM FORM OF PROTECTION IN THE ECONOMIC PROCEEDINGS

The core of economic procedural form is action proceedings. The history of formation of the economic proceeding indicates that action proceeding is the basis, tradition and core of proceedings. Today usefulness of claim forms for protection of rights of economic entities is beyond doubt. Scientists emphasize that claim form of the right protection is the main form of protection dealing with most disputes on the right because it provides parties in dispute with the most extensive warranties to ascertain all the circumstances connecting with the violation of law, and to issue lawful and reasonable decision.

The article investigates the features of the claim form of protection in the economic proceedings. The characteristics which embody functional adequacy of claim form for the subject of judicial work, which is the consideration and resolution of the dispute on the right.

To sum up the above, we believe that claim form of protection is characterized by the following features: involvement of parties is active, decisive, reciprocal; proceeding is based on the competition of the parties; the basis of the dynamics of the development of procedural legal relationship according to the stages and phases is the procedure of effective adjudgement; resolution of the case forms a peculiar system of judicial acts, consisting of the main act – court decision and decisions of intermediate and additional value.

The above features of claim form of protection are designed to ensure its functional adequacy for the subject of judicial work, namely consideration and resolution of the dispute on the right.

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# THE CONCEPT AND PRINCIPLES OF THE STATE POLICY OF REGULATION OF ECONOMIC ACTIVITY

The condition of Ukrainian state is marked with the existence of the phenomenon of entrepreneurship, the rapid development of which leads not only to the practical implementation of certain activities for profit, but the activity of researchers of different fields of jurisprudence and law-makers on theoretical grounding and statutory consolidation of legal status of the phenomenon.

Ensuring economic security of state and well-being of its citizens by protecting the competitive market environment, the constitutional right of every citizen to entrepreneurial activity, creating favorable and predictable legal framework is one of the main functions of the state in terms of further development of the market economy. The state properly fulfills this function in terms of effective state regulation of economic activity. Despite the fact that the Concept of improvement of state regulation of economic activities providesв by 2007 the definition of economic problems, the priority of improving state regulation of economic activity, major ways and the manner of their implementation, it has not led to the expected results – to fully ensure increased efficiency of state regulation of economic entities, full compliance with the legal rights of citizens to entrepreneurial activity, strengthening the role of small and medium businesses and sustainable development of the national economy.

As noted in the Concept of improving state regulation of economic activity in Ukraine there is a formed legislation establishing the legal basis of regulatory policy in the sphere of economic activity, but inefficient work of regulatory bodies do not allow to ensure proper compliance with all its requirements. In our opinion, one of the reasons enabling to ascertain such a state of implementation of such relevant areas of the state, is the failure of the principles set out in the law of this policy.

The legislator has successfully identified six basic principles of regulatory policy. These principles should be supplemented with speed – responding to new changes in the legislative framework; flexibility – adapting to market; objectivity – taking into account the interests of all businesses.

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# SOME ASPECTS OF JUDICIAL PRACTICE OF DISPUTE RESOLUTION ON CONCLUSION, CHANGE AND DISSOLUTION OF BANK DEPOSIT AND BANK ACCOUNT AGREEMENTS

The article researches the features of judicial practice of dispute resolution on conclusion, change and dissolution of bank deposit and bank account agreements through the examples of judicial practice.

The author analyzes legislative requirements to the conclusion of bank deposit and bank account agreement, with regard to basis formed in science doctrine of civil law conception about legal nature of bank deposit agreement, the agreement, which has signs of both loan and storage contract. The article provides examples of the judicial practice on challenging of fact of conclusion of the bank deposit agreement.

The author draws conclusion that proofs of conclusion of the bank deposit contract can be: saving book, deposit certificate or any other document that complies with requirements of the law and confirms the fact of depositing monetary resources (for example, receipt).

That is why, fact of absence of registration of the bank deposit agreement, and, as a result, not account of the monetary resources attracted from physical and legal persons on the basis of entrance into a contract, makes it impossible to consider a failure to observe writing form of the bank deposit agreement.

On the basis of analysis of statutory acts, the author came to such conclusion: the change of agreement envisages the change of its terms, therefore, in case of change of the bank deposit agreement, obligations change as well. It requires will of both parties of agreement and must be recorded in the same form as bank deposit agreement.

Failure to observe these terms deprives the second party to agreement of a right to accept the change terms and is characterized by a court as unilateral abandonment from fulfilling commitment.

Ambiguousness of decisions in the judicial practice on possibility of avoiding contract, in connection with expiration of term of its action enabled the author to draw conclusion that it is necessary to search resolution of this question in a doctrine and in legislation.

On the basis of the conducted analysis the author came to the conclusion that in case of nonperformance by the bank of the obligations on the return of sum of deposit together with the bank deposit interest in the term set by an agreement, obligations under the agreement are not terminated, that is why the term of expiration of a contract in investigation does not influence termination of obligations.

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# CREATION OF LEGISLATION ON MERGERS AND ACQUISITIONS AND PROPOSALS FOR ACQUISITIONS IN UKRAINE BASED ON EUROPEAN MODELS

Further improvement of the legislation on the fight against raiders and its negative consequences, including standards for judicial protection against raiding, should take place by borrowing the best legal regulations of different countries, which can be implemented in our country and optimizing government policies on fight against raiding.

In Ukrainian legislation issues of mergers are fragmentary consolidated in paragraphs 2-5 of Art. 107 of the Civil Code, paragraphs 1-3 of Art. 59 of the Commercial Code and in the Procedure for issuance and registration of shares of joint stock companies created by the merger, division, separation or transformation, or in relation to which the accession is applied. However, objectively, the institution of mergers should be regulated by a separate legal act, given the importance of this phenomenon for the economy and the possibility of using the institution for corporate raids.

Thus, based on the rule-making practices of the EU on this issue, it should be noted that the main provisions of the law "On Mergers" should be:

1) determination of the ways to merge;

2) creditors, including bondholders and those with other debt claims for the companies participating in the merger shall be protected to avoid breach of their interests;

3) protection of shareholders' rights;

4) publicity of information about the merger. For information about merging company must be published, which makes the acquisition of enterprise objectives;

5) the impact of the merger. The merger should lead to the following consequences: transfer of all rights and obligations of the acquired company to the acquiring company; acquisition by the shareholders of the acquired company, of the status of shareholders of the company implementing the acquisition; dissolution of the company being acquired;

6) declaration of procedure of merger invalid.

It seems expedient to create special Law of Ukraine "On Acquisition and Take-Over Offers", which would be developed within the process of adapting existing legislation of our country to EU law. That is why, for the example of creation of such act, first of all, it is necessary to consider the rules of the Thirteenth Directive (Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids), which govern the rules applicable to the acquisition of companies by offering the purchase of shares.

Thus, this law in the first place should define the concept of acquisition, which, given the European practice, should be understood as the public offer made to all holders of securities to purchase some or all of these securities, mandatory or voluntary, that supposes or is intended to gain control of the company absorbed in accordance with current legislation.

Also, the law "On Acquisition and Take-Over Offers" should regulate the issue of termination of the offer, review of the offer, competition of offers; reporting results of the offer.

Thus, summing up all the above, it should be noted that inclusion in current corporate law of developments concerning the detailed regulation of mergers and acquisitions of companies or passing of a special law regulating these issues is justified trend in the economy and the fight against raiding. Thus, the development and adoption of legal acts regulating a legal question of raiding and forbidding illegal mergers and acquisitions, namely the development and adoption of the Laws of Ukraine "On Mergers" and "On Acquisition and Take-Over Offers". Codification of developed standards into a special codified legal act – the Code on Mergers and Acquisitions – seems expedient as well.

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# LEGAL NATURE OF LIQUIDATION OF THE LEGAL ENTITY

In the article the legal nature of liquidation of the legal entity and occurrence of civil consequences are analyzed. It is important because there is no legal definition of liquidation of the legal entity in legislation of Ukrainian at all. The article describes the development and transformation of relationship in liquidation procedure and kinds of such relationships. Changes of relationship in liquidation procedure depending on different circumstances are analyzed. Such circumstances are legal facts that at the same time are the causes of liquidation. It is important to note that the fact of termination of the legal entity's activity does not indicate dissolution of legal entity, especially liquidation. The article clarifies the relationship between the moment of making decisions on liquidation of the legal entity and the occurrence of civil consequences of the liquidation. Ukrainian legal regulations and theoretical researches of Ukrainian and Russian scholars on liquidation of the legal entities are examined. It is substantiated that civil consequences of liquidation come from the moment of making liquidation decisions of the legal entity.

Also there is no legal definition of reorganization of the legal entity in the legislation of Ukraine. The article provides a helpful illustration of the difference between the two main forms of termination of existence of legal entity, reorganization and liquidation. That is why specific attention is paid to the legal succession because legal succession can not be the criterion of differentiation of reorganization and liquidation of legal entity. Liquidation procedure provides capitalization of payments related to compensation for damages caused to life and health as well.

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# LEGAL FACTS IN FAMILY LAW AS AN INDICATOR OF THE LIMITS OF LEGAL REGULATION

The author aims to establish the basic regularities of definition of limits of legal regulation in family relations, influencing granting of legal status of legal facts to those life circumstances that give rise to accrual, modification or termination of the respective relations in the family. The question of the possibility of extending the regulation of family relations on the general principles of the functioning of the institutions of civil society is considered.

Life circumstances, being the basis of accrual, modification or termination of family relationships, acquire the status of legal fact in case of their coverage of legal regulation of social relations.

The limits of legal regulation of family relations depend on which model of co-existence of the state, civil society (religious and civic organizations, including children and youth, charitable associations, parents' committees, etc.) and families is formed at a certain historical stage of development of society.

Family is an independent sphere of social relations, the main feature of which is its private nature. It separates the family from both the state and civil society. The fact that the family is not an institution of civil society indicates no reason for it to be covered by the principles of operation of the latter.

The main way to establish legal facts in family law is consolidation (through direct order) or recognition (by defining the scope of liberties, in which the parties can independently determine the grounds of accrual, modification or termination of the relevant type of relationship) in positive law. However, it should be kept in mind that positive law: a) must be subjected to critical evaluation for compliance with the objective limits of legal regulation; b) may be subjected to dynamic interpretation, if public relations as a result of development require different behaviors. In addition, the state may partially authorize the regulations established by institutes of civil society (for example, statute of NGO), thereby granting them legal status. Life circumstances, determined by such rules as the basis of accrual, modification or termination of family relationships, acquire the status of legal fact.

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