MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE
INTERNATIONAL HUMANITARIAN UNIVERSITY

SCIENTIFIC HERALD OF INTERNATIONAL HUMANITARIAN UNIVERSITY

Series:

JURISPRUDENCE

COLLECTION OF SCIENTIFIC PAPERS

Edition 10-1 volume 2

Odesa
2014

Collection was included to the List of scientific specialist editions of Ukraine
according to the Ministry of Education and Science of Ukraine order № 463 from 25.04.2013

Series was founded in 2010

Founder – is International Humanitarian University

It is published by the decision of Academic Council of International Humanitarian University
protocol № 2 from the 18th of November 2014

Certificate of state registration
KV № 16818-5490R from 10.06.2010

Editorial address:
International Humanitarian University, office 202,
Fontanska road street 33, Odesa city, 65009, Ukraine,
tel. (048) 719-88-48, fax (048) 715-38-28, www.vestnik-pravo.mgu.od.ua

LABOUR LAW, SOCIAL SECURITY LAW

M. Inshyn
Doctor of Law Sciences, Professor, Honored Lawyer of Ukraine,
Head of the Department of Labor Law and Social Security Law,
Taras Shevchenko National University of Kyiv,
Corresponding Member of the National Academy of Legal Sciences of Ukraine

EMPOWERMENT OF EMPLOYEES WITH THE POSSIBILITY OF PROTECTIONS FROM UNLAWFUL DISMISSAL

Art. 120 (p. 1) of the Draft Labor Code of Ukraine contains the following: "dismissal of an employee on the grounds specified in Articles 98, 104, 105 of this Code shall be preceded by giving them the opportunity to provide evidence of skills, productivity, conscientious attitude to job duties, legality of their actions or inaction, to explain the committed violations or improper performance of job duties". The author reveals the content of the articles referred to in this provision.

In the above context an economic justification of dismissal is also interesting. Thus, in practice, in most cases, if necessary, large companies conduct personnel reduction in the following way: dismiss the most well-paid employee, who is usually more qualified, and keep less paid and less qualified worker, and sometimes even give the place of more qualified person to less qualified, which, if necessary, in case of the crisis of enterprise significantly reduces the financial cost. From this point of view to enable the employer to dismiss the less qualified workers is unprofessional interference in the activities of the company. Thus, it is not clear how in this case to protect the interests of employers, declared as a goal in the Ch. 1 Art. 1 of the Draft Labor Code. It is interesting, that in the case of dismissal of a highly qualified worker, he is left without a job even in difficult times across the country. Instead, dismissed less qualified worker almost always can not find a job. In this view, it is expedient to protect rights of an employee who was trying to get more knowledge, improve his skills, however, the rights of less protected and secured employee are not only unprotected, but he also appears to be in a situation of hopelessness when he can just fill up the ranks of the unemployed.

It is clear that in the case of statutory consolidation of right of the employer to dismiss the less qualified worker, the employer shall not dismiss a qualified worker. All the reasons set out above make it clear that the crucial issue is the definition of qualification, since if it is understood as the ability to perform certain tasks, the situation in general is obvious, however, if it is understood as documented knowledge, it may cause problems. Thus we get a society of workers who do not focus on quality of work, but are protected by diplomas, certificates and other documents. The solution to this problem can probably be, firstly, to provide priority right to remain at work for workers with higher productivity and skills, and secondly, to introduce clarification of the

type of qualification – academic or professional.

Summarizing the foregoing, it must be concluded on the feasibility of more detailed study of the Draft Labor Code of Ukraine and submission for discussion of the assumptions of this research, because today our state faces very important and at the same time difficult tasks – to protect workers' rights, but along with it to ensure the economic interests of employers, which eventually determine the availability of jobs and, consequently, the realization of the basic right of workers – the right to work.

S. Popov
Doctor of Law Sciences, Associate Professor,
Professor at the Department of Civil and Legal Disciplines,
Education and Research Institute of Law and Security,
Dnipropetrovsk State University of Internal Affairs

LEGAL REGULATION OF UNPAID VACATIONS

Speaking about the unpaid vacations in a general way, in Ukraine duration of such is 15 calendar days, except activities on optimization of staffing level of public authorities when vacation is provided for the period of duration of such measures and the application does not require the employee. Innovation in this regard is the Part 1 Art. 200 of the draft Labour Code, which provides unpaid vacation for up to three months. Thus, the second paragraph states that if work stops at certain times due to climatic conditions and other reasons, the employee in his statement may be given unpaid vacation for the period of suspension of work. In other words, it is possible to say that such vacation may be granted without limitation and without good reason – at the request of the employee. In this case, a separate concern is the position as follows: "if work stops at certain periods for other reasons besides climatic conditions", which allows the employer to artificially create the following reasons for providing "unpaid" vacations.

K.I. Dmytriieva considers the provisions of Art. 200 of the draft Labour Code of Ukraine as the reduction of the level of labor rights and rightly draws attention to the fact that the draw law does not provide a list of circumstances that may be considered "other reasons", under which an employee can be "sent" on unpaid vacation, and therefore it gives the employer an unlimited right to use this type of vacation and thus leads to unlimited violations of labor rights. We agree with scientists that for Ukraine the situation where the employer makes the employee quit on unpaid vacation is very typical, and therefore consolidation in Art. 200 of the right of employer to provide employees with unpaid vacation is unacceptable. In addition, the provisions of Art. 200 of the draft law completely deprives the sense of the Art. 234, which provides guarantees for employees to receive payment during downtime, because the employer instead of paying employees for downtime, would rather provide them with unpaid vacation.

It is stated that currently found vague legal regulation and contradictory legislation on unpaid vacations actually allow employers interpreting legislation in their sole discretion and violate state guarantees provided for employees. Therefore, the draft Labour Code of Ukraine should regulate this issue more thoroughly, which in turn requires a number of changes, particularly in terms of a clear distinction between the rights of the employer and employee in the provision of unpaid vacation.

I. Lahutina
Candidate of Law Sciences, Associate Professor,
Associate Professor at the Department of Labor
Law and Social Security Law,
National University "Odessa Law Academy"

PROTECTION OF EMPLOYEE'S PERSONAL NON-PROPERTY LABOUR RIGHTS BY THE UKRAINIAN PARLAMENT COMMISSIONER FOR HUMAN RIGHTS

The article proves that the question of the rights and freedoms of man and the citizen has a significant place in all sectors of government, because it is their most important constitutional duty. Gross violations of economic and social rights are among the main causes of conflict and the lack of a systematic struggle against discrimination and inequality in the enjoyment of those rights may undermine the process of post-conflict reconstruction. The critical importance of ensuring the personal non-property labour right by the Ukrainian Parliament Commissioner for Human Rights is emphasized.

The article substantiates that one of the major trends in labour rights and the modern labour legislation has been shift of priorities in the content of labour rights in the sphere of comprehensive development of personality.

The Commissioner for Human Rights is convinced that it is extremely important for Ukraine to study and take into account the world's experience in order to create an effective mechanism that would ensure the observance of the constitutional right to the respect for privacy in the country.

This article examines that the right to the respect for privacy is guaranteed by the Art. 32 of the Constitution of Ukraine; the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights"; the Law of Ukraine "On Protection of Personal Data", that came into force on January 1, 2011. This Law creates the State Service of Ukraine on Personal Data. The activity of the State Service is aimed at protection of the person's right to the respect for privacy, analyzing the situation with the processing of personal data and providing necessary consultations on databases registration. According to the Art. 22 of the Law of Ukraine "On Protection of Personal Data" the Ukrainian Parliament Commissioner for Human Rights exercises parliamentary control over the observance of person's right to the respect for personal data.

I. Rusanova
Candidate of Law Sciences, Associate Professor,
Yaroslav Mudryi National Law University

GROUNDS OF DISCIPLINARY LIABILITY OF ATTORNEYS UNDER UKRAINIAN LEGISLATION

Disciplinary liability of attorneys is an important component of their legal status. Its function is to ensure high level of professional competence and integrity of the legal profession as a remedial institution of civil society. The grounds and procedure for application of disciplinary sanctions to attorneys is stated in the Law of Ukraine "On the Bar and Legal Practice" and the Rules of Attorney's Ethics. Since attorney exercises an independent professional activity, the decision on imposition of disciplinary sanctions shall be adopted by a special institution, established by this community – the qualification and disciplinary commission of the region. Thus, this is the professional responsibility, legal nature of which is determined by the special status of the lawyer in a democratic society.

Such typical violations committed by attorney in Ukraine include: (1) persuasion of the client to refuse from his attorney; (2) false or derogatory statements of attorney about his client in the media or on the Internet; (3) poor customer service by attorney; (4) lack of action to defend the client after receiving the fee, refusal to come into contact with the client; (5) deception of a client, promising to solve the client's problem by illegal means, for example through corrupt practices; (6) overestimation of the fee size for the attorney's services. Those violations result in imposition of disciplinary and other types of sanctions.

It is emphasized that compliance with laws when providing legal services is not only legal but also moral duty of attorney, which is required by legal ethics. The Rules of Attorney's Ethics, accepted in 2012, contain the row of recommendations about the proper conduct of attorney, which cover both official and unofficial conduct and serve the criteria of estimation of activity or inactivity of attorney in case of breach of law.

M. Mishchuk
Associate Professor at the Department of Civil and Labor Law,
Kyiv National Economical University named after Vadym Hetman

ABOUT THE SIGNS OF SOCIAL PARTNERSHIP IN LABOR LAW

In our view, the main features peculiar to institute of social partnership are:

• the possibility of a tri– and bi– (in some cases determined by law) lateral cooperation;

• limited number of entities is authorized to participate in social partnership;

• focus of the process on reaching a consensus between the parties;

• participation of state as a party and as a regulator of social relations of partnership;

• duration of the process until overcoming all contradictions between the parties.

The first sign of social partnership marked by us is the possibility of tri– and bilateral cooperation.

The second feature is limited number of entities authorized to participate in social partnership. The list of them is enshrined in Article 4 of the Law of Ukraine "On Social Dialogue in Ukraine".

The third and fifth signs can be seen together because a consensus between the parties is the moment to overcome the differences between them. Social dialogue lasts as long as the parties to the process of identification and convergence do not reach common agreements and accept an agreed solution.

The state's role as a regulator of social relations of partnership is primarily present in its legislative, executive and judicial branches.

In labor law, despite the constant updating of legislation in this area, there are still problems with the lack of regulation and the regulation of expression of particular forms of external relations of social partnership. The existence of such inconsistencies and conflicts requires further work to improve the legal framework aimed at the development and regulation of social partnership and the related research that will take into account all the shortcomings and introduce new elements in the system of industrial relations.

Creation of European country is not possible without bringing the democratic process to the appropriate level, which in turn is impossible without a dialogue at all levels taking into account the rights and interests of each individual.

S. Selezen
Candidate of Law Sciences, Associate Professor,
Kharkiv National Automobile and Highway University

CONCEPT OF COMPENSATION FOR NON-PECUNIARY DAMAGE IN LABOUR LAW

This article is devoted to the study of the concept of non-pecuniary damage caused by the violation of labor rights on the part of employer. Particular attention is paid to the analysis of the concept of "compensation" comparing it with the term "repayment" and the concept of "non-pecuniary damage" comparing it with the term "moral damage", conclusions about the possibility of their use as synonyms in science and law.

At the present stage the legislation recognizes that the right to compensation for non-pecuniary damage is one of the guarantees of protection of other rights and freedoms. At the same time, based on the fact that impairment (presence) of non-pecuniary damage is the presence of negative changes in the mental health of worker as a result of the realization of a violation of his human rights, providing emotional, mental or physical suffering, it is impossible to say that moral damages may be completely eliminated, restoring health and peace of mind of the victim, because it is simply impossible to compensate.

In addition, it should be noted that the legislation does not define the concept of "non-pecuniary damages in labor law".

In turn, V.D. Chernadchuk examines liability for violation of labor rights causing moral damage as imposition on the owner or authorized body of disadvantageous material consequences of being subjected to sanctions in cash or other tangible form used independently from causing damage to property for the benefit of the employee.

In our study we can conclude that the term "non-pecuniary damage" in a broad sense can be understood in three ways: as a compensation for moral damages to the employee; as an independent, universal and special type of liability of the employer; as a way to protect workers' rights in labor relations.

Many authors' definitions of the term "non-pecuniary damage" include contradictory categories and concepts, which, according to some scholars, is clearly false. Indeed, it is possible to see that in the doctrine of law (as well as in legislation) scholars often equate the concept of "non-pecuniary damage" and "moral damage".

M. Bodnaruk
Candidate of Medical Sciences,
Associate Professor at the Department of Civil Law,
Yuriy Fedkovych Chernivtsi National University,
Chairman of the Trade Union Committee of Employees

PRINCIPLES OF OPTIMIZATION OF MECHANISM FOR ENSURING LEGAL REGULATION OF SOCIAL INSURANCE IN UKRAINE

In Ukraine permanently and problematically takes place the process of reforming the legal regulation of social insurance, which since independence have accumulated a number of problems associated primarily with economic and demographic situation in the country. Legislation in the field of social insurance has become financially unstable and does not provide adequate social security of most people. Therefore, financial instability appeared to be one of the key determinants that lead to a legitimate need to reform and optimize the regulation of social insurance in Ukraine.

Thus, the system of principles of optimization of mechanism to ensure the legal regulation of social insurance in Ukraine are: 1) the principle of improving the solvency of the population, which involves a gradual reform of legislation of Ukraine in terms of improvement of the existing system of public works, the development of advanced technologies that provide new jobs in the periphery; implementation of programs for employment; 2) the principle of approximation of minimal insurance benefits for social insurance to the subsistence level determined by the fact that today in Ukraine minimal insurance benefits do not cover the living wage; 3) the principle of continuous strengthening of social protection of insured persons, ensuring decent standards of life as a result of the sustainable development of social insurance on the basis of balancing the interests of insured persons and citizens working, determined primarily by the constantly developing society, and, respectively, the needs of reforming legislation as well; 4) the principle of codification of the system of legislation of Ukraine on social security determined by the fact that ramified net of legal acts in the field of social protection available in Ukraine creates a situation of overregulation and bureaucracy, and causes a significant number of collisions and gaps.

Y. Ryzhkova
Assistant of private notary,
Donetsk City Notarial District

LEGAL REGULATION OF THE PRIVATE SECTOR OF MEDICINE IN THE USA

In this article the author convincingly demonstrated understanding of the fact that classic, primary example of private medicine can be medicine in the US. In the United States widely and most preferably in comparison with other countries represents itself private health care system. In turn, the latter is characterized by decentralization, high development of the infrastructure of insurance companies and the absence of state regulation. It should be noted that these factors are primarily new for our country which makes the consideration of foreign legal regulation of private medicine through the prism of the giant state relevant.

The article "Legal Regulation of the Private Sector of Medicine in the United States" reveals: the structure of the US healthcare system, types and regulation of government programs, health expenditures, health financing system, management of insurance companies, research and development of medical products, regulation and supervision in the health system.

After consideration of the subject of research from different sides, it seems expedient to focus on the unconditional positive sides in the field of medicine of the USA: high level of technology, research, education and training of medical workers; developed range of health insurance and insurance companies, cooperation of employers with such organizations; financing of the health care system, public spending and the government's support of medicine; effective government programs, etc. In turn, for the formation of advanced medicine in our country the decentralization of the health care can not be applied. In our opinion, there should always be a single coordinating and supervising body, pricing policy and a unified approach to it; medicine, including private, must be more available to representatives of each social class and level of the population.

S. Chernota
Chairman of Yasynuvata Municipal
and District Court of Donetsk Oblast

ON THE SPECIFICS OF WOMEN LABOUR: HISTORICAL AND LEGAL ASPECTS

The development of Soviet law, especially constitutional provisions concerning equal rights of men and women reflected the ideology of the state regarding women. A woman, according to the ideas of the Soviet state was a worker and a mother, and her husband's role was to be a worker, an employee. As we see, in that period in the Soviet state women were not seen as socially significant workers. Soviet and Ukrainian Soviet law reflected the formal relationship to the idea of equality between the sexes. Rejecting the ideology of feminism as unsuitable for socialism, Soviet law surprised the world with consolidation of the principles of equality, especially in the Constitution. However, these constitutional provisions were quite formal, legal mechanism for ensuring equal opportunities had not been created.

In 1922 was adopted the Labour Code, which contained a system of rules establishing the features of the regulation of women labour. Article 131 of the Labor Code prohibited for pregnant women night and overtime works: "Pregnant women and those nursing babies can not work at night and unsociable hours". Resolution of the Central Election Commission and the Council of the People's Commissars on June 4, 1926 stated that women can work at night at the seasonal work, except for pregnant women and those who are nursing babies.

During the period from 1917 to 1991, many legislative acts in the field of women's work were adopted in the USSR. Their analysis on the one hand, shows the care and support of women, on the other – makes it possible to trace changes in the status of women, depending on the state policy in the community.

Labour Code of 1971 is still in operation. It is believed that it started a new, modern stage of labor legislation of Ukraine. In 1991, Ukraine became independent. Development of a new labor law began, but on the basis of the Labour Code of 1971.

The next fundamental step in the development of women's right to work was the adoption of the Law of Ukraine of September 8, 2005 № 2866-IV "On Ensuring Equal Rights and Opportunities for Women and Men" aimed to achieve parity of women and men in all spheres of society, including employment, by law ensuring equal rights and opportunities for women and men, the elimination of gender discrimination and the use of temporary special measures aimed at addressing the imbalance between women and men to exercise the same rights granted to them by the Constitution and laws of Ukraine. State policy to ensure equal rights and opportunities for women and men is aimed at: ensuring equal opportunities for women and men with a combination of work and family life;

family support, responsible parenthood (Article 3) and others.

However, gradually, with the development of society the system of laws improved as well, particularly, regulations enshrining certain employment guarantees for women. On the one hand, the state allegedly cared about women, and, on the other hand, used them to the maximum. This continued until this policy was reflected in a decrease in birth rates. Only after that, woman began to be considered as a special subject of the employment relationship. Thus, women in the modern world have full status of the object of labor rights through a long way to the formation of labor laws.

O. Antalovtsi
Postgraduate Student,
Department of Constitutional Law
and Comparative Legal Studies,
Law Faculty,
Uzhhorod National University

LEGAL REFORM OF HEALTHCARE SYSTEM IN THE UNITED KINGDOM

To date, there is no doubt about the need to reform the health care system of Ukraine, and to introduce health insurance, especially considering the intentions of Ukraine to join the European Union. The author believes that the results of such reforms cannot be positive without positive experience of foreign countries. United Kingdom, as well as any modern, democratic state, makes health issues of its citizens a priority. Reform of the UK's health system has started more than 20 years. During that time the model of health insurance, which is investigated in the present work, was elaborated.

UK uses almost exclusively a system of budget financing of health care for citizens, which stipulates its public character with a high degree of centralized management. Budget scheme provides funding for health care from general tax revenues to the state budget and covers all categories of the population. Thus, the bulk of health care facilities are owned by the state and managed by the central and local authorities in a hierarchical manner.

Overall, the author believes that one of the undeniable advantages of health insurance in the UK is a clear system of centralization. That is, the government completely controls all processes from the rules of conduct for participants, including health care providers.

H. Honcharov
Degree Seeking Applicant,
Dnipropetrovsk State University of Internal Affairs

HISTORY OF THE FORMATION AND DEVELOPMENT OF THE INSTITUTE OF LABOR DISCIPLINE

This article presents the historical and legal study of the development of the institute of labor discipline in the national labor law, defines periods of historical development of legal regulation of relations with labor discipline in their dynamics.

Formation of the institute of labor discipline is inextricably linked with the formation of labor law as a separate legal system in the field of national law and originates from the middle of the XIX century.

The first attempt to regulate the legal relations of labor discipline appeared in the Law "On Supervision of Manufacturing Enterprises and Institutions and Relationship between Manufacturers and Workers" of June 3, 1886. The Revolution of 1917 significantly changed the political situation in Ukraine. Thus, December 10, 1918 was first adopted Labour Code of the RSFSR. In early 1922, it became clear that the Bolsheviks' utopian ideas of the victory of the world proletarian revolution in real life suffered a complete collapse. The new economic policy has contributed to significant changes in labor law that can be summarized in three main provisions: the abolition of labor service, replacement of regulation of work measurement and revival of contractual basis. With the beginning of the World War II regulation of labor discipline became more brutal. Authorities imposed labor mobilization and labor service again. The Decree of the Presidium of the Supreme Soviet of the USSR "On the Working Hours of Workers and Employees in Wartime" of June 26, 1941 introduced mandatory unpaid overtime work up to three hours per day.

Thus, at the beginning of Khrushchev Thaw (1953-1964) formally the only major source of labor law was the Labor Code adopted in 1922. However, it regulated only court staff and prosecutors.

From 1965 to 1984 the country was led by L.I. Brezhnev. The next phase took place within the policy period called "perestroika" (restructuring) (1985-1991), which was approved by the XXVII Communist Party Congress in February 1986. The above information makes it possible to determine the following periods of historical development of the institute of labor discipline: 1) "Period of factory legislation" (1886-1917); 2) "Post-revolutionary period" (1917-1922); 3) "Pre-war period" (from the adoption of the Labour Code in 1922 till the Second World War); 4) "The Second World War period" (1939-1945); 5) "Post-war period of Stalin's regime" (1945-1953); 6) The Khrushchev Thaw (1953-1964); 7) Brezhnev's period of "stagnation" (1965-1984); 8) The period of "perestroika" (1985-1991).

LAND, AGRARIAN, ENVIRONMENTAL AND NATURAL RESOURCES LAW

I. Karakash
Head of the Department of Agrarian, Land and Ecological Law,
National University "Odessa Law Academy"

FEATURES OF THE NATURAL OBJECTS AND LEGAL CONSOLIDATION OF THEIR ATTRIBUTION IN UKRAINE

Origin of natural objects and their resources gives rise to doubts about the fitness of the definition of natural objects and their appropriateness in the category of ownership. In our opinion, it is more preferable to enshrine in national legislation not people's ownership of natural objects and their resources, but their legal recognition and legal confirmation as the national wealth. Public property is something inherited from past generations by the people of the present generation to be transferred to future generations of the people of the country.

The specifics of the legal regulation of property relations considering natural objects and their resources is affected by the following factors: the creation by nature and without the participation of labor rights and public material costs; qualitative and quantitative limitation in natural environment; their spatial limits; difficult reproducibility or non-reproducibility; physically motionless and immovability in space of the main (basic) natural objects; the fact that natural resources have no cost and in a strictly economic sense, are not commodities. Adequate perception of natural properties of objects of natural origin and their social value by legislator, optimal consideration of their features in the legislation could have a significant impact on their actual conditions, rational use and effective protection.

E. Pozniak
Candidate of Law Sciences,
Associate Professor at the Department of Environmental Law,
Law Faculty,
Taras Shevchenko National University of Kyiv

T. Sharaievska
Candidate of Law Sciences,
Assistant Lecturer at the Department of Environmental Law,
Law Faculty,
Taras Shevchenko National University of Kyiv

INTERNATIONAL LEGAL APPROACHES TO THE IMPLEMENTATION OF ENVIRONMENTAL MONITORING IN UKRAINE

Constitutionally guaranteed validity of international treaties, ratified by the Verkhovna Rada of Ukraine and the fact that they appeared to be a part of national legislation determine the relevance of international legal approaches in the development of national environmental legislation. The article deals with analysis of international law regulating the issues related to the environmental monitoring on the basis of international cooperation of Ukraine and other countries in order to implement their provisions into national environmental legislation.

Considering the system of international environmental law objects and types of environmental monitoring (as defined by international conventions and other sources ratified by Ukraine), it is suggested to classify environmental monitoring according to the object: environmental monitoring of biodiversity and landscapes, of waters and seas, of air and the ozone layer, of climate, and environmental monitoring in the area of environmentally hazardous activities and global environmental security and several other types.

Environmental monitoring is a subject of a number of agreements between the parties of various international treaties. Sometimes, environmental monitoring is combined with environmental control (inspection), environmental impacts assessment or other management procedures. Very often it is identified with the observation of certain natural resources, human activities and their consequences, while observations are thought to be a subject matter of environmental monitoring.

In order to improve legal regulation of environmental monitoring in Ukraine, it is suggested to support the adoption of Law of Ukraine "On Environmental Monitoring"; to eliminate the fragmentation in the creation of subordinate regulatory mechanism of environmental monitoring; to continue the research in the field of international environmental law implementation, taking into account European approaches.

M. Vashchyshyn
Associate Professor at the Department of Labor,
Agrarian and Environmental Law,
Ivan Franko National University of Lviv

LEGAL AND ORGANIZATIONAL PRINCIPLES OF FORMING THE NATIONAL ENVIRONMENTAL NETWORK IN UKRAINE

The article deals with the analysis of formation of the national environmental network in Ukraine. On the basis of the analysis of the special legislative regulations and their practice there are some recommendations for improving the procedure of the formation of the national environmental network in Ukraine.

The national environmental network in Ukraine is formed on the basis of the procedure according to the common principles of the international law, the national environmental law and land law. Due to the drawbacks of the procedure of the formation of the national environmental network in Ukraine the process of its formation is rather slow.

It is suggested to form a mechanism of projecting eco-corridors as important structural elements of the national environmental network in Ukraine exercising their eco-communicative functions. The environmental law of Ukraine regulates just the procedure of formation and identification of particularly protected territories and reservations as core areas of the environmental network.

The progressive experience of the formations of the environmental network "Nature 2000" of the European Community is worth sharing. Mainly a wider set of imperative powers should be given to the special governmental authorities in the field of the organization of the environmental network as it is in the European Commission.

It is expedient to form the special permanently acting Central Authority in the sphere of formation of the national environmental network in Ukraine and its regional offices for making and implementing local programs and schemes of formation of the environmental network included in the General Scheme for Planning the Ukrainian Territory.

O. Ostapenko
Associate Professor at the Department of Economic Theory and Law,
Kharkiv National Automobile and Highway University

L. Shevchenko
Senior Lecturer at the Department of Economic Theory and Law,
Kharkiv National Automobile and Highway University

THE HISTORY OF LEGAL STANDARDIZATION IN THE ENVIRONMENTAL FIELD

The article highlights the issue of the origin and development of standardization and its influence on the development of culture, science, the economy of many countries.

The purpose of this article is to determine the historical stages of formation of standardization process in Ukraine, including environmental standardization. Analysis of this scientific works shows lack of development of this problem.

The authors reviewed the questions of specification, technical conditions, types, sizes and shapes of standards. Particular attention is paid to the state system of standardization.

The article deals with the issue of state standardization of environmental quality and the problems of development and improvement of environmental standards.

In conclusions of the article, the authors identified three main lines of the development of national standardization. Firstly, the definition of environmental and organizational standards, marginal effects on the environment, and secondly, the adoption, development and definition of environmental and organizational standards and environmental impact of the standardization on economic activity, industry, environmental business relationships across the country; thirdly, standardization of environmental terminology that previously had secondary importance, but allowed to fix the same concepts, which promoted the development of new and effective implementation of existing standards.

In the article the relevant is the theme of international cooperation in the field of standardization, and analysis of the process of implementing to the Ukrainian legislation some European principles and guidelines about environmental standards and regulations. The article reveals problems of influence of international law on the national standardization, methodology of regulation and standardization.

The following historical stages of the process of formation of legal standardization are identified: 1) the emergence of elements of standardization in Ukraine (Kievan Rus, medieval); 2) the emergence of the first standards to improve product quality, based on the values of unity and flourish of industrial standardization (XV–XVIII); 3) expansion of activities in the field of standardization, due to the development of productive forces and production relations, industry, transport, science (XIX); 4) formation of regulatory framework and forms of governance in the field of standardization

and development of Ukrainian standardization within the USSR, the emergence of the first environmental standards (XX centuries); 5) establishment of national standardization system (from 1991 to the present).

The authors descried the ways of reforming the national system of standardization and technical regulation and the establishment of regulatory acts as priorities for EU integration and accession to the World Trade Organization.

Y. Tretiakov
Director General of private leasing agricultural enterprise "Promin"

ON THE FEATURES OF OCCUPATIONAL SAFETY AND HEALTH IN AGRICULTURE

Legal support of the right to adequate, safe and healthy working conditions in agriculture is carried out not only by labor law, but also, for example, by civil, agricultural, administrative law, etc. That is, within our country there is a legal mechanism that not only provides a definition of such right, but also guarantees and protects it from attacks.

In agriculture, a person has limited impact on production processes. This is determined by the fact that the objects of activity in the industry are the living organisms, namely plants and animals; their biological processes take place according to certain laws of nature and objectively require adjustment of production rhythm to the rhythm of nature. Activity in agriculture is characterized by its specificity. It is characterized by its own specific features, including the following ones: a) the land is the main means of production; b) an important characteristic of agriculture is soil fertility; c) dependence on the weather and climate conditions; d) specificity of application of seasonal work; e) problems of enhancing urbanization. The most important feature of agricultural enterprises is relations between members of the enterprises on soil cultivation.

Public relations arising during provision of occupational safety and health in agriculture have signs of homogeneity and separation. The peculiarity of these relations is peculiar only to them subjective structure, which is the basis for the reference not only to the subject of labor law but also to the subject of the agrarian law. Sign of homogeneity of these relations is manifested in the fact that despite the variety of functions (sanitation, organizational, technical, medical and socio-economic) their main purpose is the protection of rights in the agricultural labor. Only the totality of these measures and means can help achieve maximum results in the health and safety through their interaction and combination. F.M. Raianov supports this view and claims that the fastening basis of various social relations is the creation and maintenance of healthy and safe working conditions in agriculture. This fastening basis makes them so distinctive that they together form the subject of legal institution of a special quality.

As a general rule the labor relationship between the employee and the employer arise on the basis of conclusion of the labor contract. However, in some cases there are exceptions, such as a farming enterprise, because it can be created by one citizen of Ukraine, or more citizens of Ukraine, who are relatives or family members. Labour relations that occur in it are governed by the Charter of the Farming Enterprise (Article 1 of the Law of Ukraine "On Farming Enterprise"), and therefore a labor contract is required. However, members of enterprise may hire employees according to the terms of the employment agreement (contract).

Thus, the legal nature of labor in agriculture is based on the state's recognition of the rules and standards relating to occupational health and safety for the employees' protection during the performance of their duties. The main purpose of this recognition is to guarantee the life and health of workers in agriculture and efforts to maintain a high level of efficiency of the worker. Occupational health and safety in agriculture serves as a part of labor law, which is a set of commonly defined rules and standards that set forth the rights and obligations of the parties to the relationship, the primary objectives of which is preservation of life and health of employees who work in the agricultural production.

CRIMINAL LAW, CRIMINOLOGY, PENAL LAW

V. Cherniey
Doctor of Law Sciences, Associate Professor,
Rector of the National Academy of Internal Affairs of Ukraine

PROBLEMS OF CRIMINAL LIABILITY FOR MISUSE OF PUBLIC FUNDS

Based on a comprehensive legal analysis of the legislation on criminal liability and the corresponding law enforcement practices, problematic aspects of the definition of objective and subjective signs of misuse of public funds are explored. Background of the research is the fact that social and political transformations in our country are accompanied by changes in all spheres of society and define fundamentally new challenges for state institutions, which are systematically updated. Control over the management and distribution of financial resources is essential in the situation of total deficit and crisis in most areas of budget-management.

The perception of a new philosophy of public administration fundamentally changes the requirements for law enforcement in the allocation and use of public funds. The main parameters of their work have become not only the number of detected offenses and prosecuted offenders, but, above all, detection and elimination of the causes and conditions (determinants) of damages caused to economic entities and state. Absence of proper management and protection of public finance makes impossible real protection of rights and freedoms, external and internal security, environmental protection, government regulation of the economy, satisfaction of social and cultural needs of the people, social assistance to the disabled and the poor, maintenance of state power and administration, as well as funding for other state expenses, in particular to strengthen the country's defense.

The conclusions are made that the outcome of the deep economic and legal analysis of the subject of offense under the terms of Art. 210 of the Criminal Code of Ukraine and the monitoring of legal practice proved that the existence of off-budget obligations during the crisis is not always a sign of misuse of public funds. This is determined by the fact that public sector is not restructured in the direction of saving budget resources. Thus, at the present stage crime qualification in case of appearance of off-budget obligations should be based on a detailed assessment of connection of costs, which led to emergence of such obligations, with the activity of institution and established standards for its maintenance.

O. Humin
Doctor of Law Sciences,
Professor at the Department of Criminal Law and Procedure,
Educational and Scientific Institute of Law and Psychology,
National University "Lviv Polytechnic"

MEASURES OF PREVENTION OF CRIMES RELATED TO DRUG SMUGGLING

The article is dedicated to the examination of grounds and circumstances that encourage drug smuggling. Also, the major measures of crime prevention related to drug smuggling are designated.

It should be admitted, while conducting a research, that in a structure of crime determination there is a tendency to define two categories of circumstances: circumstances of personality formation and circumstances of surroundings, which influence a person's choice of unlawful conduct. Such circumstances do not lead directly to the committing of a crime; they have to be examined as condition for a certain crime committed by an organized group. While forming a definition of "determinant" of a crime we assume there is no need to include the following epistemological characteristics to the major indicia of the following notions: necessity, imminence, regularity of circumstances and conditions that encourage to crime commitment.

Preventive measures, which should be undertaken concerning the elimination of discovered circumstances and conditions that encourage drug smuggling, can be the following: special preventive operations, submission of documents (amendments, recommendations) to certain companies, organizations or state bodies; speeches by the representatives of bodies of internal affairs before the public; publishing of materials of educational and preventive character in mass media; radio and television addresses; submission of amendments regarding the improvement of customs control etc.

R. Orlovskyi
Candidate of Law Sciences,
Associate Professor at the Department of Criminal Law № 1,
Yaroslav Mudryi National Law University

THE ACCOMPLICE AS A TYPE OF CRIME ASSOCIATES

The precise distinction between the accomplice and aiding is important for a deeper understanding of the connection between crime associates. The specific contribution made by each of them in a common joint activity ultimately leads to the recognition of a person as accomplice. In this sense, the concept of aiding reveals the essence of the role of accomplice. There can be no aiding without accomplice, exactly as there can be no accomplice without aiding. In this sense, these terms are used in this article.

There is no concept of aiding in the criminal law of Ukraine. The concept of accomplice is defined by the legislator in paragraph 5 of Article 27 of the Criminal Code of Ukraine: "The accomplice is a person who has facilitated the commission of a criminal offense by other accomplices, by way of advice, or instructions, or by supplying the means or tools, or removing obstacles, and also a person who promised in advance to conceal a criminal offender, tools or means, traces of crime or criminally obtained things, to buy or sell such things, or otherwise facilitate the covering up of a criminal offense". Given this definition it follows that the concept of accomplice belongs to the criminal offender and reflects its specificity as a type of crime associates. The accomplice is a type of crime associates performing joint criminal activity, and therefore he above all it bears general features of criminal offender (a criminal offender shall mean a sane person who has committed a criminal offense at the age when criminal liability may rise under the Criminal Code of Ukraine). However, there are special features of accomplice that are determined by the role played by the accomplice in a joint crime. In the science of criminal law aiding is recognized as socially dangerous act of accomplice, revealing the specifics of his role in a joint crime, reflecting the content of its functions.

Thus, the concept of accomplice must firstly take into account all common objective and subjective features inherent to the concept of complicity, and secondly – reflect specific signs of accomplice as a type of crime associates.

Y. Zarosynskyi
Candidate of Law Sciences, Associate Professor,
Professor at the Department of Criminology and Penitentiary Law,
National Academy of Internal Affairs of Ukraine

LEGAL BASIS FOR ACTIVITIES OF SUBJECTS FOR PREVENTION OF JUVENILE CRIMES

The article studies the level, dynamics and structure of crimes committed by juveniles. It analyzes specific motivation of juvenile's behavior, which makes them commit crimes. It also studies the legal basis of activities of subjects for their prevention.

Only with a help of cooperation of all subjects for prevention (based on the use of preventive measures provided by legislative instruments) it is possible to solve problems of effectiveness of preventive measures of juvenile delinquency. The main goal of this article is to characterize the contents of the legal basis for activities of subjects, which prevent juvenile delinquency. The system of preventive measures of juvenile delinquency is determined by legal and actual position of juveniles as age group in society, which is influenced by negative factors of social environment; specific nature of crime determinants and personal qualities of children, who commit crimes. Juvenile delinquency prevention is planned and provided at different levels and directions to different groups of minors and is characterized by a wide range of preventive measures. These measures are developed according to the tasks, set for preventive subjects with the help of specific tools used by bodies of preventive activities. The whole preventing system aims to neutralize determinants, which form different personal qualities of juvenile criminals. Services, bodies and departments of internal affairs of Ukraine form a system of interrelated elements united by the common goals and objectives, which are institutionalized in the legal and other acts.

L. Yemets
Candidate of Law Sciences,
Associate Professor at the Department of Criminal Law Disciplines,
Dnipropetrovsk Humanitarian University

SOME FEATURES OF THE FOREIGN NATIONAL PRACTICE OF REGULATION OF TRANSPLANTATION BY CRIMINAL LAW

Transplantation of human organs, tissues and cells in the Ukraine is not regulated by sufficiently developed legal system and needs to turn to foreign experience. The purpose of the article is to study the experience of developed countries on the legal regulation of transplantation.

Legislation of many countries prohibits human organs trade. However, some states avoid tough policy regulating organ donation and enshrine mechanisms for providing compensation to donor for certain anatomical material.

In view of the above, Ukrainian legislator should determine priorities: the development of transplantation or integration into the European Union, which categorically refuses to regulate this matter except banning it.

According to experts, supply of human organs and tissues from the countries of the "third world" (Argentina, Brazil, Honduras, Mexico, Peru, Paraguay) into Europe is highly popular. According to American experts, the market of organs exists in some countries of Latin America.

In France, Poland, Bulgaria, the Czech Republic, the Netherlands, Finland, Sweden, the United Kingdom, Algeria, Argentina, USA, India, Bogota, according to data studied by NCB of Interpol in Ukraine, there are no reported cases on the illegal sale of human organs, which police in these countries has already called "criminal phenomenon". This is determined by the fact that these countries, especially in Eastern Europe, are transit territories for moving donors or their anatomical components.

The use of criminal norms in these circumstances actually resulted in the application of the criminal law by analogy, contrary to the principles of criminal justice and prohibited Part 4, Art. 3 of the Criminal Code of Ukraine.

Ignoring scientific provisions of the theory of criminalization has led to gaps in criminal law and reduction of the quality of the regulatory tool of crime prevention. The low efficiency of application of Art. 143 of the Criminal Code of Ukraine demonstrates the need for improvement, while non-application of Art. 144 and Part 3 of Art. 149 of the Criminal Code of Ukraine favors decriminalization.

Thus, in order to scientifically substantiate structural changes in the criminal law of Ukraine, criminological analysis of crimes related to transplantation and use the experience of foreign countries on the legal regulation of transplantation should be implemented.

O. Pchelina
Candidate of Law Sciences,
Associate Professor at the Department of Criminalistics,
Forensic Medicine and Psychiatry,
Faculty of Training of Personnel for Investigative Forces,
Kharkiv National University of Internal Affairs

THE CONCEPT OF CRIMES RELATED TO OFFICIAL ACTIVITY

Particular social danger of the crime in the field of official activity highlights the need to formulate definitions of crimes related to official activity for the purpose of (1) instilling in law enforcement officials understanding of nature of such crimes and (2) facilitation of law enforcement officers' activity on detection and investigation of this type of criminal offenses accordingly.

The author analyzed a large amount of legal literature. This analysis indicated the existence of many unresolved issues. In particular, most of the scholars examine primarily criminal law determining the selected categories of offenses; other scientists examine the general provisions of methods of crime investigation. The author of the article used different research methods for solving the following scientific objectives:

– separation, clarification of the content and correlation of different terminology that marks crimes in the field of service activity;

– clarification of the nature of criminal legal interpretation of crimes in the area of service activity;

– clarification of the value of the formulation of criminalistic definition of crimes related to service activity;

– formulation of criminalistic definition of crimes in the field of service activity.

In particular, the article reveals the meaning of such terms as "official offenses", "malfeasance", "administrative offenses", "corruption crimes" and "crimes in the field of official activity".

As a result, the author formulated the following criminalistic definition of crimes in the field of service activity. These are socially dangerous guilty acts (1) committed as by officials through using their authority and position contrary to the interests of the service, and the opportunities arising from the official position, as by persons who illegally appropriate authority or official title (2) and, consequently, undermine the authority and violate the established order of functioning and normal activity of the state apparatus, the apparatus of local government and other legal entities regardless of their ownership.

I. Kyseliov
Candidate of Law Sciences,
Lecturer at the Department of Criminal Law and Criminology,
Dnipropetrovsk State University of Internal Affairs

PREVENTION OF WILLFUL INFRINGEMENT ON HUMAN LIFE: VICTIMOLOGICAL ASPECT

This article is dedicated to the prevention of willful infringement on human life in terms of victimological prevention. The article deals with the main problems the place and role of the victim of willful infringement on human life. The most typical victimological situations, leading to infringement on life are analyzed; the role of the victim in each situation is defined.

Clearly defined measures of victimological prevention, depending on the specific situation and the behavior of the offender are suggested. Typical measures of victimological prevention, taking into account the peculiarities of criminogenic situations in which people find themselves, and behaviors of offenders and potential victims of willful infringements on human life are considered. Based on the elaborated measures of victimological prevention of willful infringements on human life, system of their prevention was developed.

Exceptional value of victimological prevention of willful infringement on human life in the modern world is substantiated. The article provides specific information obtained during special studies. Some features of prevention of willful infringement on human life at victimological level are specified. It is concluded that in most cases victims themselves contribute to their own victimization, and their actions (willful or unwillful) only anticipate the infringement. It is established that much of the potential victims deliberately do not want to improve their own situation hardly considering the possibility of becoming a victim of willful infringement on life.

I. Tkachenko
Senior Lecturer at the Department of Legal Studies,
Kirovohrad Institute of Human Development,
Open International University of Human Development "Ukraine"

CRIMINILOGICAL DESCRIPTIOIN OF REASONS OF DRUG ADDICTION IN UKRAINE

In Ukraine drug addiction increases every year and scientists say it is equivalent to the epidemic. Mankind should understand that drug use not only is injurious to health but also kills.

There is a close inextricable link between drugs and crime, as drug addiction has been one of the most difficult components of background events. Each year drug addicts and people in a state of drug intoxication commit over 24 thousand crimes.

Spreading of drug abuse in our country is determined by several circumstances. Firstly, Ukraine is a significant source of raw materials for the manufacture of drugs. This fact attracts into Ukraine distributors of drugs from other CIS countries. They involve villagers who harvest and sell poppy straw in the criminal business. Secondly, Ukraine is located on major international routes, and its borders are not properly secured. Just as law enforcement officers stop distributors of drugs of plant origin from abroad, much more dangerous synthetic drugs appear.

Drug addiction in society is a medical, social and legal problem. This suggests that it is necessary to ensure the political, social stability in the country. Fighting with this negative social phenomenon should be carried out not only where it thrives, but also where it may appear.

H. Chernyshov
Degree Seeking Applicant,
Department of Criminology and Penal Law,
National University "Odessa Law Academy"

CRIMINOLOGICAL CHARACTERISTICS OF FRAUD IN INVESTMENT AND CONSTRUCTION SPHERES

The need for housing is among the main basic material (and perhaps spiritual) human needs. High prices, lack of legal awareness of the population in mechanisms for financing construction and protection of their legitimate interests, big money turnover and other factors lead to shadowing of relations within financing of construction and spread of fraud in this area.

According to the survey of indexes of transparency of the world real estate market Global Real Estate Transparency Index 2014, which was held by the international consulting company Jones Lang LaSalle and its subdivision LaSalle Investment Management, which specializes in managing investments, Ukraine in 2014 had rolled down in the rankings of transparency of the real estate market from 61st to 74th position (total transparency index was calculated in 102 global real estate markets by analyzing 115 different factors).

The general tendency that has been developed in the construction market of Ukraine can be characterized by the reduction of the rate of housing construction with public funds and by corresponding increase of the volumes of construction by attracting private investors. Thus, this year only 3400 square meters of housing were built with public funds, which is less than 0.1% of the total residential real estate.

As of January 1, 2014, there were 16,380 unfinished projects, of which 6.3 thousand (or 38.5%) were under construction, and 10.1 thousand (61.5%) constructions were suspended or closed down.

The current level of "construction" fraud in the spread and scope of damage, the level of organization and the degree of concealment, the number of cases and protection methods from persecution qualitatively differs from previously known to law enforcement authorities traditional ways of taking possession of property of individuals. It is, in fact, the new form of criminal business.

We draw attention to the negative tendency of increase in the incidence of fraud in the financing of real estate from 58 in 2000-2003 to 286 cases in the period from 2006 to 2010.

P. Tkachuk
Odessa I.I. Mechnikov National University

RESPONSIBILITY FOR CRIMES ENCROACHING ON CULTURAL PROPERTY, BASED ON THE CRIMINAL CODES OF THE RUSSIAN FEDERATION AND UKRAINE: COMPARATIVE LEGAL ANALYSIS

The paper studies some issues of classification of crimes encroaching on cultural property, based on the criminal law of the Russian Federation, and stresses on necessity to adopt positive practices by Ukrainian lawmakers aimed at extending essential elements of crimes encroaching on cultural property, namely possibility to establish individual responsibility for cultural property theft and return of stolen cultural objects back to Ukraine.

Some essential elements of crimes are analyzed based on the Criminal Code of the Russian Federation (CCRF), namely: 1) stealing of objects of exceptional value (Art. 164 of CCRF); 2) Non-return to the territory of the Russian Federation within the fixed time of items of the artistic, historical, or archaeological heritage of the Peoples of the Russian Federation and foreign countries (Art. 190 of CCRF). These elements of crimes are not stipulated in the Criminal Code of Ukraine.

Having analyzed the above articles and some issues of classification of the above crimes, the conclusion has been made that it is necessary to adopt practices of the Russian Federation by Ukrainian lawmakers for the purpose of accurate classification of crimes encroaching on cultural property, as well as for facilitating work of law-enforcement agencies in the given field.

CRIMINAL PROCEDURE, CRIMINOLOGY, INVESTIGATIVE ACTIVITY

V. Bernaz
Doctor of Law Sciences, Professor,
Head of the Department of Criminal Law, Procedure and Criminalistics,
International Humanitarian University,
Honored Worker of Science and Technology,
Corresponding Member of the National Academy of Legal Sciences of Ukraine

COVERT INVESTIGATIVE (DETECTIVE) ACTIONS AS CRUCIALLY IMPORTANT MEANS FOR SOLVING STRATEGIC GOALS OF PRETRIAL INVESTIGATION

Defining trend of development of modern criminalistics and practice of pretrial investigation of crimes is the use of not only tactical but also strategic approaches to solving investigative tasks.

Using the foundations of the strategy is often the key to the use of innovative tools and techniques for sustainable improvement of activities in order to maintain optimal quality of pretrial investigation of criminal offenses.

A characteristic feature of the modern state of investigation of crimes is that investigative activities are carried out in an increasing organized opposition on the part of criminal underworld.

In the preparation and conduct of the covert investigative (detective) activities (CI(D)As) investigator must always remember the ultimate strategic goal of criminal proceedings. His current activities should correspond to the strategy of the investigation, be aimed at examination of existing evidences and detection of new ones. It is rarely possible to succeed being focused only on short-term results.

The prohibition to disclose the tactics of the CI(D)As enshrined in the criminal procedure law does not allow to reveal the problem in more details in this publication, however, the already stated enables to argue that the development of the problems of using the CI(D)As in course of implementation of the strategic objectives of the pretrial investigation is at the initial stage of the study. CI(D)As have their advantages and disadvantages and can lead to success or to failure of the strategy: a lot depends on the prevailing situation of investigation; the level of organization of investigative activities and training of the investigator; determination of the optimal direction of the investigation and the quality of implementation of the strategic plan for the investigation of criminal proceedings; ability to timely and quality conduct the CI(D)As to fulfill tactical and strategic objectives of pretrial investigation. All these aspects are components of the strategy of investigative activities and are subjects to further research.

O. Riabukhina
Candidate of Law Sciences,
Associate Professor at the Department of Legal
Regulation of Entrepreneurial Activity,
Faculty of Linguistics and Law,
International Scientific and Technical University

Y. Tsyhaniuk
Candidate of Law Sciences,
Associate Professor at the Department of Social,
Humanitarian and Legal Disciplines,
Institute of Intellectual Property
of National University "Odessa Law Academy" in Kyiv

THE CRIMINAL PROCEDURAL LEGISLATION SYSTEM

The author's view of the Ukrainian criminal procedural legislation established in the Article 1 of the Criminal Procedure Code of Ukraine is presented in this paper. Scientific, research and practical sources disclosing the content and structure of the criminal procedure law are analyzed. The list of criminal procedural laws and sources affecting criminal proceedings is given.

The purpose of this article is to study the criminal procedure law as general and fundamental procedural legal category in the activity of the participants in criminal proceedings.

According to the Criminal Procedure Code of Ukraine, the system of criminal procedural law includes:

1) relevant provisions of the Constitution of Ukraine;

2) relevant provisions of international treaties ratified by the Verkhovna Rada of Ukraine;

3) the Criminal Procedure Code of Ukraine;

4) other laws of Ukraine.

Despite the progressive nature of the CPC of Ukraine and the relative adequacy of time for amendments to some legislative acts in connection with the adoption of the CPC of Ukraine, as of today, there are contradictions between the CPC and "other laws" of Ukraine.

In summary, we note that the criminal procedural legislation of Ukraine provides a comprehensive list of laws as regulatory acts listed in Part 2 Art. 1 of the Criminal Procedural Code of Ukraine, not including in its structure the court practice, regulations issued by the public authorities on the implementation and realization of the Criminal Procedural Code of Ukraine etc.

Thus, the CPC of Ukraine uses a narrow approach to the understanding of the criminal procedure legislation. This is a system of all ordered laws that regulate the procedure of criminal proceedings in Ukraine and international treaties ratified by the Verkhovna Rada of Ukraine.

Judgment of the European Court of Human Rights, resolutions of the Supreme Court of Ukraine, judgments of the Supreme Court of Ukraine approved by it after reviewing the decisions of

the courts in criminal cases, regulations of the Cabinet of Ministers of Ukraine, regulations of the General Prosecutor's Office of Ukraine, the State Security Service of Ukraine, the Ministry of Internal Affairs, the State Border Guard Service of Ukraine should be considered as the sources to be used by the participants of criminal proceedings if they contain rules of law not contradicting the criminal procedural law of Ukraine and/or eliminating its gaps.

M. Mazur
Candidate of Law Sciences,
Assistant Lecturer at the Department of Criminal Procedure and Criminalistics,
Law Faculty,
Ivan Franko National University of Lviv

ISSUES OF COMPENSATION FOR DAMAGES TO PROPERTY IN THE COURSE OF REHABILITATION OF THE PERSON IN CRIMINAL PROCEEDING

In the article, on the basis of analysis of acting criminal procedure legislation and its practical application, as well as existing theoretical studies in legal literature, some problems of the procedure of compensation for damages to property of innocent persons, who were under criminal prosecution or (and) were convicted, are analyzed.

Based on the aforementioned a conclusion has been drawn that legislation regarding this issue is not sufficiently efficient, has normative contradictions and requires prompt changes.

This can be achieved due to the following factors: creation of a well-defined, coordinated system of normative protection of rights and legitimate interests of innocent persons; implementation of resolution of all issues relating to compensation for damages, restoration of rights as ways of protection of the rights and interests of individuals within the same judicial proceedings in the same judgment, i.e. the establishment of a single order of protection of rights and lawful interests of individuals, regardless of the stage of criminal proceeding, where the grounds for such a protection arose. Taking into account the fact that the court decision is the final stage of the criminal proceeding and without its actual execution the entire process is negated, adjustment of applicable legislation in this area is necessary.

Y. Stetsenko
Candidate of Law Sciences, Lawyer

TOWARDS THE DEFINITION OF OBJECTIVITY IN LEGAL PROCEEDINGS

The article is concerned with research of the meaning of the definition of "objectivity" in legal proceedings. This term is widely used both in the theory of law and the law enforcement. Specificity of this term in law stipulates consideration of its general theoretical understanding. For this purpose the meaning of the principle of objective truth in civil and criminal proceedings is examined. It is fundamental principle for judges, prosecutors, investigators. The author comes to conclusion that historical aspects of this principle in civil and criminal proceedings show that this principle was formed in XX century when ideological persuasions took place. However, nowadays the principle of objective truth entails many problems in law enforcement in Ukraine and looks rather as oxymoron.

New Criminal Procedure Code of Ukraine was passed without principle of objective truth. This decision has no theoretical basis. This raises the question about the meaning of the principle of objective truth in criminal proceedings. The concept of "objectivity" has an abstract and ambiguous meaning. It can not be verified. Many Ukrainian judges, prosecutors, investigators use the term "objectivity" in procedural documents for justifying their laziness in giving arguments during legal proceedings. It led to unfavorable results: the level of confidence in the judiciary and law enforcement agencies has been diminished.

The author offers to revise the attitude to the objectivity in legal proceedings and questions the advisability of terms "objectivity" and "principle of objective truth" in criminal proceedings.

N. Horhul
Chief of the Department of Citizens' and State's Interests Representation in Courts, Prosecutor's Office in Kharkiv, Junior Counselor of Justice

REVIEW OF FUNCTIONS OF CITIZENS' OR STATE'S INTERESTS REPRESENTATION IN COURTS IN CASES DETERMINED BY LAW IN THE CONTEXT OF THE NEW LAW "ON GENERAL PROSECUTOR'S OFFICE"

This article singles out the principles of the prosecutor's representative functions under the recently enacted by Parliament Law of Ukraine "On General Prosecutor's Office". The scope and content of representation by the prosecutor is determined. The reasons and forms of representation and mechanisms for their implementation by prosecutor are specified. The relevance of this topic is determined by the fact that on October 14, 2014 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On General Prosecutor's Office". In accordance with Paragraph 1 of Section XII of the Law № 1697-VII, this Act shall take effect six months after its publication, except for certain provisions of Paragraph 5 of Section XII, which came into force on the day following the day of its publication. The law was published in the official publication of the Verkhovna Rada of Ukraine on October 25, 2014. This means that some provisions of the new law have come into force on October 26, 2014, and the law generally takes effect from April 26, 2015.

The novelty of the law is legislative consolidation (Article 3) of such principles of prosecutorial activity as prevention of prosecution's unlawful interference into the activity of legislative, executive and judicial powers; respect for the independence of the judiciary, which prohibits public questioning of justness of court decisions outside procedure of their appeals in the manner prescribed by the procedural law; strict adherence to professional ethics and behavior.

The conclusion lies in the fact that the Law of Ukraine "On General Prosecutor's Office" in a new way regulates the scope and content of powers of the prosecutor maintaining his representative function. We hope that new legislation has created the necessary basis for a new level of representational activity which will not substitute state institutions' activity (control), as well as activity of local self-government or other entity, entitled with the appropriate authority to protect the interests of citizens and the state in court, and will contribute to the safe and high-quality implementation of mechanism of the human rights function of the state.

A. Sharkova
Postgraduate Student,
Department of Justice,
Law Faculty,
Taras Shevchenko National University of Kyiv

THE STATE OF THE SCIENTIFIC DEVELOPMENT OF THE ISSUES OF ENSURING THE RIGHT TO LIBERTY AND SECURITY OF PERSON IN CRIMINAL PROCEEDINGS

This article analyzes the state of the scientific development of the issues of the right to liberty and security of person in criminal proceedings, studies the judgments of the European Court of Human Rights concerning the ensuring of the right to liberty and security of the person in the criminal proceedings, identifies the key areas for the further theoretical studies of the problem.

Implementation of constitutional rights and freedoms is the determining criterion, which characterizes each state as a democratic, social and legal one. Thus, it is not a coincidence that scientists and practitioners in criminal justice pay the maximum attention to the protection of rights and freedoms in criminal proceedings.

The purpose of the article is to consider and analyze the scientific research of the issues concerning the right to liberty and security of person in criminal proceedings.

Analyzing the decisions of the European Court of Human Rights, we can indicate that the Convention and practice of the European Court protect the right to liberty and security of person in criminal proceedings extremely hard and define the judicial review as one of the main tools in the mechanism of the ensuring this right.

We believe that the main directions of the further theoretical studies on ensuring the human right to liberty and security must be:

– the development of the concept of human rights in criminal proceedings;

– determination of theoretical and legal framework to ensure the detainees' rights to liberty and security in criminal proceedings;

– analysis of the problem of ensuring the right of every person to freedom and security in the light of the decisions of the European Court of Human Rights;

– identification of the measures to improve the efficiency of the procedural mechanism of the judicial supervision to ensure the detainees' rights to liberty and security, considering the binding decisions of the European Court of Human Rights

Thus, the research of the theoretical and practical problems of the right to liberty and security in criminal proceedings is one of the main directions of the current scientific research in the field of criminal procedure, which requires a comprehensive, integrated scientific approach.

N. Kravchenko
Adjunct,
Department of Criminal Procedure,
National Academy of Internal Affairs of Ukraine

THE ROLE OF THE VICTIM (ITS REPRESENTATIVE) IN PROVING A CIVIL ACTION IN CRIMINAL PROCEEDINGS

The scientific article highlights issues that relate to the legal status and functions of the person of the victim (its representative) in proving a civil action in the criminal proceedings.

The author highlights and underlines the fact that the criminal procedure law should ensure not only strict adherence to the rights of the victim to timely repayment (compensation) for damage caused, but also its activity during the preliminary investigation and proceeding to establish circumstances to be proved. International legal instruments regulate effective restoration of the rights of victims of criminal offenses. This leads to the need to reform national legislation to bring it into line with international standards of human rights regarding general trend towards extension of the application of the principles of competition and discretion and improvement of procedural activity of parties to criminal proceedings.

The article provides a legal analysis of the studied issues considering advantages and disadvantages of legal regulation of the procedural status of victim (its representative) in criminal proceedings in Ukraine, and suggests some ways to improve it. In addition, the article highlights the author's own position on the authority of the criminal proceedings in proving the type and extent of damage caused by a criminal offense. It is also emphasized that it is the "burden of proof" in order to satisfy demand of plaintiff is imposed on the civil plaintiff itself.

The scientific novelty of the article is manifested in theoretical understanding of the problems at issue and the author's own position on the defined research question.

V. Kolodchyn
Degree Seeking Applicant,
Department of Criminal Procedure,
Yaroslav Mudryi National Law University

PROSECUTOR'S REFUSAL TO PROSECUTE

The article describes the author's view of individual issues of the prosecutor's refusal to prosecute in the court. Author's opinion on disputable matters of doctrine and practice is expressed in the article. The possible ways of resolving these problems are suggested.

The author points out that the basic provisions lead to the conclusion that the prosecutor may refuse to prosecute in the court: a) at the preparatory stage of proceeding; b) in the course of court hearing; c) after the end of the trial. The article concludes that the prosecutor may refuse to prosecute only after exploring all the evidences in court. The author substantiates the precarious position of the High Specialized Court of Ukraine for Civil and Criminal Cases.

Also in the article the question of procedural independence of the prosecutor in court is considered. The view of this question is demonstrated both from the standpoint of the theory and from the perspective of practice. The approaches to this issue were researched by Ukrainian scientists and researchers of the near abroad. It is concluded that the adoption of a decision of the prosecutor to refuse to prosecute should be subject to the maintenance of departmental control.

The article may be of interest to law students, graduate students, scholars, as well as for practitioners. The author's conclusions are based on existing researches and developments as well as on his own work, carried out in the framework of the dissertation research survey.

D. Pieshyi
Degree Seeking Applicant,
Department of Criminal Procedure,
National Academy of Internal Affairs of Ukraine

JUDICIAL CONTROL AS AN INSTRUMENT FOR ENSURING LEGALITY IN PRE-JUDICIAL CRIMINAL PROCEEDING

The article is devoted to research of the legal nature and essence of judicial control as means of ensuring legality in pre-judicial criminal proceedings, to establishment of its intrinsic difference from control activity of the prosecutor and the head of body of pre-judicial investigation.

It is established that the history of development of criminal trial testifies the increasing distance of pre-judicial proceeding from judicial examination. It is one of guarantees of independence of judges at the resolution of the judgment from executive authorities which are bodies of pre-judicial investigation and the prosecutor. Respectively pre-judicial criminal proceeding uses the means of ensuring legality among which the important place is taken by judicial control.

Judicial control as activity of court in pre-judicial criminal proceedings, unlike activity of the head of body of pre-judicial investigation and the prosecutor, is filled with other content and aimed only at providing lawful and reasonable restriction of basic constitutional rights and freedoms of the person.

Relevant and important in this direction is the formulation of the general criminal procedural rule which would establish a uniform procedure of control activity in pre-judicial criminal proceedings carried out by the investigative judge.

M. Popovych
Degree Seeking Applicant,
Department of Criminal Law and Procedure,
Institute of Law and Psychology,
National University "Lviv Polytechnic"

IMPROVEMENT OF LEGAL FRAMEWORKS OF OPERATIONAL INVESTIGATIONAL ACTIVITIES IN COUNTERACTING CRIMES IN THE FIELD OF DRUG TRAFFICKING

Fundamental regulations, which are basis of the activity of subdivisions of operational investigation in counteracting crimes in the field of drug trafficking is described and analyzed. Separate suggestions to amend laws of Ukraine with the purpose of improvement of fight against crimes in the field of drug trafficking are provided.

It is marked that legal framework determines basic directions and order of organization of activity of bodies of internal affairs of Ukraine in relation to counteraction to the illegal drug trafficking, providing the complex use of present forces and facilities of all structural subdivisions, improvement of forms and methods of work.

Operational investigational activity according to its essence belongs to legal sciences. The objective analysis of pre-conditions of forming operational investigation, appearances of their certain system, features of development and use of forces, means and methods must be carried out taking into account the aggregate of modern legal norms.

Operative subdivisions' activities in realization of public and covert investigation are often related to limitation of rights for citizens, that is why the indicated activity must comply with the guarantee of legality and be conducted in accordance with the international legal acts, laws of Ukraine and departmental regulations.

The Ukrainian counter-drugs legislation is being formed and improved depending on the state of illegal drug trafficking, socio-economic and political situation in the state.

INTERNATIONAL LAW AND COMPARATIVE LAW

S. Andreichenko
Candidate of Law Sciences,
Associate Professor at the Department of International
Law and International Relations,
National University "Odessa Law Academy"

INTERNATIONAL LEGAL OBLIGATION OF STATES TO ENSURE SECURITY OF THE PRACTICE OF INTERNATIONAL HUMAN RIGHTS BODIES

The article considers the problem of the international responsibility of states for the conduct of individuals which violates fundamental human rights and freedoms in the light of the concept of international legal obligations of the state to provide protection.

International human rights standards have developed obligations of states to protect individuals' human rights from the actions of other particular actors and thus to prevent, punish and treat properly for any violation of human rights even committed by non-state actors. These commitments are known as obligations to secure the effective enjoyment of a fundamental right, or positive obligations. Thus, international human rights law establishes that states have a responsibility to respect, protect and promote human rights. This responsibility exists not only when the state directly commits a human rights violation, but also when the state fails to protect those under their jurisdiction from such violations.

The practice of international human rights institutions such as the UN Human Rights Committee, the UN Committee on the Elimination of Discrimination against Women, the International Court of Justice, the Inter-American Court of Human Rights, the European Court of Human Rights shows that human rights mechanisms have advanced towards holding states more and more responsible for acts of private persons . The development of the notion and scope of positive obligations of states has provided the administrative bodies and the courts with important powers to demand certain actions to be taken by the states to restrict the freedom of action of private persons where rights of other persons or important public interests, even fundamental values, are violated.

Y. Movchan
Candidate of Law Sciences, Senior Research Scholar,
Doctoral Candidate,
Legislation Institute of the Verkhovna Rada of Ukraine

THE RULE OF INTERNATIONAL LAW: HIERARCHY OR FUNCTIONALITY?

The paper deals with the "rule of law" concept in different connotations from both national and international level point of view. The author analyses the rule of international law as a rule of law in international matters and identifies the international legal categories that shape its content.

It is indicated that the concept of primacy of international law is based rather on the hierarchy, than the functionality of the rule of law in international relations. Functionality concept of the rule of law at the international level is to apply to the rule of law in relations between subjects of international law and reflects the principle of the rule of international law within the international legal order.

A particular attention is paid to the analysis of the Report on the Rule of Law adopted by the Venice Commission at its 86th plenary session (Venice, March 25-26, 2011). It is defined that the key elements of the "international rule of law" are essentially similar to "national rule of law" and include, in particular: the legal order and stability, the equality of law, the human rights, and the dispute resolution by an independent tribunal. They are particularly important for international peace and security, transparency, good governance, justice and responsibility within the international system.

The author concludes that the rule of international law exists in contemporary international law in two dimensions: as a rule of international law in hierarchical terms (the primacy of international law) and the rule of law in international law in functional terms (the international legitimacy). Thus the rule of law in international law forms the content of the rule of international law per se.

M. Maletych
Judge of the Supreme Economic Court of Ukraine

ON THE PROBLEMS OF INDIVIDUALS' PARTICIPATION IN CONSIDERATION OF CASES IN INTERNATIONAL COMMERCIAL ARBITRATION

The article deals with the concept of economic and procedural legal personality of individuals. The features of the participation of individuals as parties in cases on international commercial arbitration are discussed. Restrictions for individuals' participation in commercial arbitration procedures are defined. These restrictions of legal personality are always associated with the exceptional nature of participation of individuals in the international commercial arbitration as the part of economic procedure. Because of that position it is determined that the procedural rights and duties of personality can not be identified with legal personality. The approach of the European Court of Human Rights to the concept of a commercial undertaking is analyzed. It is proposed to consider legal personality of individuals in the international commercial arbitration as an element of the overall foreign economic legal personality and self-employed personal status.

It is proposed to add information about the commercial legalization or independent professional activities of individuals in Rules of International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry regarding the content of the statement of claim. This will avoid problems with the competence of arbitration in cases involving foreign nationals.

A. Arar
Postgraduate Student,
V.M. Koretsky Institute of State and Law,
National Academy of Sciences of Ukraine

INTERNATIONAL LEGAL ASPECTS OF THE STATUS OF JERUSALEM

November 29, 1947, the General Assembly of the United Nations recommended the partition of Palestine into a Jewish and an Arab state and establishment of an economic union between them. It was also recommended to pronounce the city of Jerusalem to announce the extraterritorial formation, with a special international regime and Trusteeship Council to control it on behalf of the United Nations Organization. Such a regime of government should include the appointment of the governor, reporting to the Trusteeship Council, the creation of special police, whose members shall be recruited outside of Palestine, the election of the Legislative Council and the demilitarization of the city. Despite this, January 23, 1950, Israel declared Jerusalem its capital and established the state institutions in the western part of the city. As a result, in the period from 1948 to 1967 Jerusalem was divided between the two states: Israel controlled the western part, while the eastern part, including over the Holy City, was under control of Jordanian government. The General Assembly of the United Nations unanimously adopted two resolutions on July 4 and 14, 1967 declaring Israel's actions "illegal" and urging Israel "to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem". Six months after the beginning of the occupation, the UN Security Council unanimously adopted a resolution calling for "withdrawal of Israeli armed forces from territories occupied in the recent conflict". Instead, in 1980, Israel passed a law that declared all of Jerusalem "absolute and united" capital of Israel. The UN Security Council opposed this. Despite this, Israel continued to build Israeli settlements in East Jerusalem and began the construction of a wall that physically separates many Palestinian communities, but large settlement blocs in Jerusalem kept being built. Despite the consistent international condemnation, Israel continues its expansionist and aggressive policy in East Jerusalem, which is focused on achieving a strong Jewish demographic majority in municipal boundaries of the city declared by Israel. At the same time, the situation with regard to human rights of the Arab population of Jerusalem continues to deteriorate.

I. Zhdanov
Postgraduate Student,
Department of International and European Law,
Law Faculty,
Voronezh State University

THE EFFECT OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND PRACTICE OF ECTHR ON THE COURT'S DECISIONS IN THE REPUBLIC OF FINLAND

The paper investigates the mechanism of implementation of the European Convention on Human Rights into the legal system of Finland.

Finland has ratified the European Convention on May 10, 1990 after the state became a member of the Council of Europe in 1989; the Convention was implemented by the Law № 439/1990 on May 18, 1990 and by the Decree of the President. Both acts came into force on May 23, 1990.

The method of implementation of the Convention was the incorporation; it means that the original text of the Convention was reproduced in the Finnish national law, it was necessary to give it legal effect in the national legislation of Finland. As a rule, hierarchical status of an international treaty, implemented in the Finnish legal system, is determined by the status of the act of incorporation.

An important achievement for Finland was the reform of basic human rights and freedoms in 1995, which is highlighted in author's article.

Furthermore, the features of the use of norms of Convention and precedents of ECtHR in practice of the Supreme Administrative Court of Finland (SACF) and the Supreme Court of Finland (SCF) were analyzed by the author. The examples of cases involving the use of these provisions of the Convention by the Finnish courts are also presented.

It is important to note that the Finnish courts do not always explicitly refer to the ECtHR case law in their decisions, even if their effect is "clearly seen". It is an interesting observation that the Supreme Court gives a more specific reference to the judgment of the ECtHR in its activities, while the SACF relies on a vague reference. It certainly does not mean that SACF is not engaged in a complete analysis of the case law of the ECtHR in solving their cases. It is also noted that the Supreme Court in its work tends to refer to international human rights (in particular, on the provisions of the Convention).

It is concluded that courts generally accepted strong action of ECtHR practice in hearings of cases on fundamental human rights. Thus, now the Finnish courts apply the ECtHR practice "routinely" using indirect methods – the "auxiliary" and "standard" interpretation

The need for direct application of the Convention started appearing to a lesser extent, and the focus has shifted to the more frequent use of the case law of the ECtHR, as guidance on the interpretation of national law.

On the other hand, the practice of SCF and SACF in some cases shows, that they use the provisions of the Convention as directly applicable, having priority over national legislation, or even cancel their earlier decisions, based on the case law of the ECtHR.

Eventually, using such practice, they confirm the existing high standards of compliance to international agreements on fundamental human rights in Finland.

O. Malakhova
Postgraduate Student,
Department of Criminal Procedure,
National University "Odessa Law Academy"

THE ISSUE OF DISTRIBUTION OF THE BURDEN OF PROOF BETWEEN THE PARTIES OF CRIMINAL PROCEEDING

The presumption of innocence is one of the foundations of the criminal proceeding, which is the source of procedural rights and guarantees of suspect, without which it is impossible to make a fair criminal trial. Reform of criminal justice in Ukraine is focused on achievements of the international community in the field of human rights. Approximation of criminal procedural legislation to international standards, the need for more effective crime counteraction require rethinking of the content of such a key element of the presumption of innocence as onus probandi.

It should be noted that the presumption of innocence is part of the institute of promotion of defense which aims to balance the range of rights and opportunities for parties and provide them with procedural equality. Reckless shift of the burden of proof towards the accused would lead to loss of significant portion of benefits of defense, which compensate its lack of rights peculiar to government authorities. This leads to imbalance between the parties to the criminal proceedings. Therefore, it is necessary to provide conditions of legality laying the burden of proof on the defense. In our opinion, presumption of certain circumstances, confirming the guilt of person in the commitment of criminal offense shall be valid under the following conditions:

– firstly, the prosecution should have sufficient evidence base that allows suggesting the existence of criminal offense the commission of which is imputed to the suspect or accused. This means that the prosecution in support of the thesis of the existence of such circumstances must provide evidence sufficient for such confirmation unless the defense proves otherwise.

– secondly, the provision of evidence to rebut circumstances confirming person's guilt in a criminal offense is objectively achievable only by suspect or accused.

We believe that introducing exceptional cases of shift of the burden of proof of absence of socially dangerous punishable criminal act towards the suspect or accused is possible only in criminal proceedings concerning crimes that have increased levels of social danger and affect the interests of not just one person, but a considerable number of individuals, society and the state in whole, i.e. in criminal proceedings concerning terrorism, corruption, involvement in prohibited organizations.

Y. Slaboshpytska
Postgraduate Student,
Department of International Private Law,
Institute of International Relations,
Taras Shevchenko National University of Kyiv

SYSTEM OF CONNECTING FACTORS OF HAGUE CONVENTION OF 1961 ON COLLISION OF LAWS RELATING TO THE FORM OF TESTAMENTS

One of the most controversial issues in international succession law is a form of testament if the inheritance relationship is complicated by a foreign element.

Thus, the Convention has put a period to the debate about the distinction between "form" and "substance", clearly fixing the provisions that limit the possibility of drawing up a testament according to some form with regard to age, nationality or other subjective characteristics of the testator belong exclusively to the form, i.e. are conditional components of forms of testamentary dispositions.

In general, this approach ensures comprehensive and predictable solution of issues of formal validity of testamentary dispositions in international circulation.

At the same time, the lack of unified requirements to witnesses or genetic capacity creates difficulties in enforcement activities to determine the validity of testamentary dispositions, since it requires knowledge of internal legal provisions that establish such regulations in accordance with which the testament was drawn up.

It should be noted that the execution of the collision rules established by the Convention does not depend on any requirement of reciprocity. Moreover, its provisions are applicable even if the citizenship of the persons involved or the law to be applied is not citizenship or law of contracting states (Article 6). Given this, I. Medvediev concludes that the requirements of international collision principles of international act completely replace national private international law in contracting states. In this sense, the Convention provides unification of rules of private international law in the contracting states in scope of its action.

In general we can say that Ukraine's accession to the Convention was a step towards harmonization of Ukrainian legislation with the legislation of the EU and many other countries in the world, as well as an additional guarantee of protection of expression and the rights of citizens in the testamentary succession. The main positive aspect of the Convention is that it is formulated in such a way to exclude the negative effect of feedback mechanism reference solution and make it convenient and predictable for the persons concerned.

S. Vozniuk
Degree Seeking Applicant,
Department of International Law,
Ukrainian State University of Finance and International Trade

IMPLEMENTATION OF UKRAINE'S OBLIGATIONS TO COMBAT TRANSNATIONAL ECONOMIC CRIMES IN THE FRAMEWORK OF INTERNATIONAL LEGAL MECHANISMS (SUCH AS FIGHT AGAINST CORRUPTION)

The article analyzes the performance of Ukraine's obligations to combat transnational economic crimes in the framework of international legal mechanisms to fight corruption. Problems in performance of the obligations in combating economic crimes that have a transnational character has moved beyond the national borders of certain countries and became one of the global problems that need to be solved both at the international and national levels. Because of this need article reveals existing international legal mechanism to combat transnational economic crimes such as corruption in Ukraine at all state levels. The article shows the specification, analysis and interpretation of international treaties which Ukraine has already incorporated in state legislation.

It is concluded on the need for significant improvement of legislative mechanism that creates real legal basis for the prohibition of foreign economic activities of some Ukrainian and foreign economic agents which violate the established order, or exercise of their activities under special state control. Advanced legislative mechanism will contribute to blocking activities of fictitious companies and officials engaged in corrupt transactions. These measures are particularly relevant in light of implementation of Ukraine's commitments to the international community to strengthen the fight against corruption.

E. Khalapyan
Degree Seeking Applicant,
Department of International and European Law
Law Faculty,
Voronezh State University,
Deputy General Director of the Moscow Regional Public
Foundation for Russian Expeditions and Journeys
Moscow, Russia

CZECH STATE CIVIL SERVICE: LEGAL BASIS AND SYSTEM

Enlistment of state officials for the service, the principles of their activities, monitoring of servicemen are sufficiently described in the Czech science. According to Czech authors, the term "civil service" includes both legal relations of staff working in the field of public administration and circle of civil servants itself.

Institute of civil service of the Czech Republic has its roots in the continental European tradition. In the current Constitution of the Czech Republic the issues of public service are enshrined in the general procedure. Article 79 provides a brief reference – "the legal status of government employees in ministries and other administrative agencies shall be defined by law".

Charter of Fundamental Rights and Freedoms of 1991 asserts the right of citizens to equal access to any elective and other public office. The Charter also allows restriction of the fundamental rights of officials to strike. Article 44 states that the restrictions may be placed upon the exercise of the right of enterprise and of other economic activity, as well as of the right enumerated in Article 20 paragraph 2, by judges and prosecutors; by employees in state administration and in territorial self-government, holding the positions specified therein as well as upon their exercise of the right enumerated in Article 27 paragraph 4. Thus, the officials do not enjoy these rights according to the Constitution.

Thus, the current Czech system of selection and recruitment can guarantee a competition based on the criterion of business proficiency required for admission to the civil service. In this sense, it complies with the regulations of the EU Member States. Although it is necessary to resolve the following issues: the need to regulate assessment and evaluation of the business proficiency of candidates for the civil service, the lack of judicial oversight of the order of entry on duty, as well as the arbitrary behavior of candidates in case of rejection of admission on the basis of future non-compliance with democratic principles enshrined in the Constitution, or the future failure to properly perform their duties.

CONTENTS

LABOUR LAW, SOCIAL SECURITY LAW

LAND, AGRARIAN, ENVIRONMENTAL AND NATURAL RESOURCES LAW

CRIMINAL LAW, CRIMINOLOGY, PENAL LAW

CRIMINAL PROCEDURE, CRIMINOLOGY, INVESTIGATIVE ACTIVITY

INTERNATIONAL LAW AND COMPARATIVE LAW

SCIENTIFIC HERALD
OF INTERNATIONAL HUMANITARIAN UNIVERSITY

SERIES: JURISPRUDENCE

Scientific collection

Published twice a year

Edition 10-1 volume 2, 2014

Series was founded in 2010