MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE
INTERNATIONAL HUMANITARIAN UNIVERSITY

SCIENTIFIC HERALD OF INTERNATIONAL HUMANITARIAN UNIVERSITY

Series:

JURISPRUDENCE

COLLECTION OF SCIENTIFIC PAPERS

Edition 6-1 volume 2

Odesa
2013

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 № 1 from the 21th of August 2013

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

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CIVIL AND ECONOMIC LAW AND PROCEEDING

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INDIRECT MEANS OF STATE REGULATION IN THE INFORMATION SECTOR OF THE ECONOMY

Indirect means of state regulation in the information sector of the economy are becoming increasingly important in an information society and a market economy. Indirect means of state regulation are ways of achieving public goals through influence on economic interests of businesses. In the information sector of the economy such indirect ways of state regulation as state procurement, tariff regulation, tax exemptions and state subsidies are used.

State procurement of information goods is supposed to serve public interests in information sphere. For this reason in some cases legislation provides for mandatory procurement of such goods and services. Tariff regulation is mostly used in the telecommunications industry. Regulation of tariffs on universal telecommunications services is highly important. It is suggested that mobile broadband Internet access services should be part of universal telecommunication services. It is also suggested that telecommunications operators providing mobile broadband Internet access services should be exempt from radio spectrum tax to the extent that allows to cover the their losses from the provision of these services.

State subsidies are meant to compensate the losses incurred by the media providing content for social needs. It is important for clearly identify and legally define the objective of such subsidies, which must be used only to cover the rent and maintenance of office and other production costs of such media.

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THE ANALYSIS OF MAJOR CHANGES IN THE LEGAL REGULATION OF THE ORDERING PROCEEDINGS BY THE LAW OF UKRAINE NAMED «ABOUT THE JUDICIAL SYSTEM AND STATUS OF JUDGES»

The article is investigated to the major trends in the development and improvement of the legal regulation of ordering proceedings in Ukraine.

In particular, the changes in the list of requirements, on which may be issued a court writ, were analyzed in details. Withdrawal of the requirement, based on a written agreement, with the list of grounds for the issuance of a court order, is regarded as a bad legislator's move considering that the fact is that this requirement was in 90 percent of one hundred bases for the issuance of court orders, part of which was abolished extremely low.

Author reasonably criticizes the provisions for mandatory use the ordering proceedings in certain cases, stresses that alternative should be characterized as a sign of this simplified proceedings.

The input stage opening of the ordering proceeding as a positive step of the legislator is investigated. There is emphasized that today some of the shortcomings in the regulation of representation in ordering proceedings are eliminated.

At the same time the author points out that major changes were occurred in the procedure of the cancellation of a court order, entered an open trial, which investigated the application for cancellation. The author notes that the judicial statistics and practise show that not all of the changes introduced by the Law of Ukraine named «About the Judicial System and Status of Judges» are effective and appropriate.

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IMPROVEMENT OF THE LEGAL REGULATION OF CERTAIN COMPULSORY SHARE IN THE INHERITANCE OF COPYRIGHT RIGHTS

One of the outstanding problems in law relating to inheritance copyright rights remains the question of the application of the compulsory share of inheritance - legal institution known since the days of Roman law.

In legal literature on the subject expressed different positions: a statement

that the property rights of the author does not have to be taken into account when determining the compulsory share of inheritance to claim that these rights should apply in full general rules of inheritance.

In considering this issue must first examine what the consequences may be application of the provision on compulsory share of inheritance in succession to copyright, including the possibility of applying the provisions of the compulsory share of inheritance in the transition copyright to compensation in accordance hereditary succession, defining required sure to share in the inheritance of the exclusive rights to use the work, and to consider the protection of moral rights by persons entitled to a compulsory share of inheritance.

Analysis of the possibility of application of the compulsory share of inheritance in succession copyright leads us to conclude that the national legislation does not currently contain any provisions that would allow deny the application of these provisions in succession copyright, no despite the fact that this may lead in practice to a number of negative effects. In order to address the shortcomings outlined need to make changes to the national legislation regarding establishment of a special order of application of the compulsory share of inheritance for cases of inheritance copyright.

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INTERPRETATION OF STATE REQUIREMENTS CONCEPTION IN THE FIELD OF PUBLIC PROCUREMENT

Public procurement can be defined as a system of relations between the state (public customers) and business entities of all forms of ownership (implementing procurement) related to the planning, development, deployment and execution of planned intercourse for the supply of goods, works, services by means of a public contract in the specified range to meet the needs of the state according to budget and other funding sources. The main goal of the process of public procurement is to meet public needs.

The legal definition of «state requirements «conception identifies the specific procurement as state regulation of the economy. But despite the legal definition of this concept, there are scholars that equate the «public requirements» with the «public order», expounding the meaning of term «public requirements» in the field of public procurement incorrectly. Therefore, the article focuses on the distinction between «public order» and «public requirements» and the interpretation of «public requirements» in the field of public procurement.

Some authors argue that the concept of «public order» narrower than the concept of «public requirements». (L.M. Davletshyna, K.V. Kychyk, L. Karatanova and M. Kurz). But, considering this position,

scholars argue that we should not equate the above concepts. Indeed, «public order» and «public requirements» are definitions, related to different areas. The state order is a system of relations between the state and business entities of all forms of ownership, directed on satisfying the state requirements.

State requirements should be interpreted as requirements, directed on solution of the major social and economic problems, implementation of national and international programs and functioning the subjects of public procurement on the account of state budget and other sources of funding.

There is a scientific idea that public requirements are special public interests, which are provided by the usage of specially developed legal mechanism.

The term «public requirements» is a legal definition, but the term «public interest» is some broader issue. The concept of state requirements is based on the notion of deliberated and accepted by state public interest. Satisfaction of state requirements is the main pre-condition for satisfaction social and state needs. State requirements have an economic and social sense. In other words the concept of «requirement» is closely connected with the notion of «interest».

Taking into account interpretation of «state requirement» conception in the field of public procurement the author of this article supposes it would be appropriate to use the term «public requirement» instead of the term «state requirements», i.e. to insert changes in Art. 1 of the Law of Ukraine «About State Order for satisfaction state requirements». This will enable to approximate «state requirements» interpretation to the real economic relations (interest) in the field of public procurement.

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CORRELATION OF LEGAL INSTITUTIONS OF RESTITUTION AND VINDICATION IN THE CIVIL LAW OF UKRAINE

The difference between person of restitution claim and vindication is based on differences in the legal nature of these civil-law institutions. Vindication is a rem way to protect rights, but restitution is an obligation requirement. We can't agree with the position on the legal nature of restitution as vindication requirements. It is commonly claimed that vindication is proprietary (or rem) way rights to protect legal rights. The essence of this method is that the owner may reclaim property that he owns, from the person who owns them without any legal grounds.

Restitution as a protective measure, intended to restore the legal status of per-

sons by returning those persons each other everything that they gave in invalid deal. Thus, unlike vindication, restitution is always has obligatory nature, and that's why refers to the binding legal ways to protect rights and interests of different persons. The parties of restitution obligation always are the parties of invalid deal.

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THE FORMATION AND DEVELOPMENT OF THE INSTITUTION OF NOTARIES' ACTIONS APPEAL IN UKRAINE

The degree of development of scientific issues related to judicial order of appeal to notaries enough, although in recent years Ukraine has a significant amount of work has been devoted to the specific issues of Notaries (V.V. Barankova, A.A. Grynenko, G.Y. Gulevskaya, N.V. Ilieva, N.V. Karnaruk, V.V. Komarov, I. Miller, J.P. Pantalienko, A.I. Popovchenko, K.I. Fedorova, E.I. Foursa, S.Y. Foursa etc.).

Special attention deserves the thesis of the domestic legal K.L. Zilkovskaya on «Judicial Procedure for appeal of notarial acts and their denial of having committed» (Odessa, 2013), which contains specific proposals for legislative regulation of the order of the court of appeal to notaries. However, these proposals should not be limited to novels of the Law of Ukraine «On Notary» and the Code of Civil Procedure. Because of the uncertainty of the legal nature of the Institute of appeal to the notary legal system of Ukraine, the domestic legislation does not yet contain the relevant rules, which would be clearly regulated by a special procedure for applying to court for appeal of notarial acts, denying the transaction.

In the Verkhovna Rada deputies I.G. Berezhnaya, I.A. Gorina was introduced a new version of the draft law on notaries, which was registered in the Verkhovna Rada of Ukraine of March 22, 2013 (№ 2627). «The draft Law of Ukraine «On Notary» Article 83 established that the dispute about the wrong notarial acts or illegality in the commission of a notarial act, or failure in the commission of a notarial act is considered by court action proceedings under the rules of civil procedure.

Also I.G. Berezhnaya was introduced the draft of the Ukraine (№ 3197 from 19.09.2008), buyout goes through a certain process improvements based on the resolution of the Verkhovna Rada of Ukraine on 19 April 2011 «On returning to the finalization of the draft of the Notary Procedure Code of Ukraine.»It provides, in Article 79, which regulates the recognition of the notarial act invalid, it is determined that the issue of law that is associated with a notary's actions before the courts of civil jurisdiction in the order of action production. Article 80 of the draft of the Ukraine devoted to the appeal of illegal notarial acts or denying the transaction.

This article also found that the consideration of such cases shall be made in the order of action of civil proceedings. In the development of the new Law on Notaries and NPK Ukraine should pay particular attention to not only the organization of notaries, notaries notary order fulfillment operations, but also focus on the regulation of the procedure of appeal to notaries, given the demands of the civil procedure law.

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PARTICULARITY OF PERSONALIZED ACCOUNT OF THE INSURED PERSONS' RIGHTS IN RELIGIOUS AND OTHER BELIEFS IN THE FIELD OF COMPULSORY MEDICAL INSURANCE

The article is devoted to the issues of legal status of personal data, to problems appearing in the process of application of legislation on personal data, concordance of Russian legislation on personal data with the Federal law «About obligatory medical insurance in the Russian Federation» for the protection of individuals with regard to automatic processing of personal data.

Obligatory medical insurance is a part of system of the state social insurance. It is a specific kind of insurance which provides to all citizens free health services.

Realization of services in program of obligatory medical insurance as well as in all other kinds of insurance, is regulated by rules, only in this case rules are established by the law of the Russian Federation «About obligatory medical insurance in the Russian Federation» (Federal law № 326-FZ).

Regulations of the Federal law № 326-FZ and published in order to ensure implementation of Federal law № 326-FZ compulsory health insurance regulations don't regulate the sphere of religious rights of the citizens (religious views).

All in all the provisions of the Rules of compulsory medical insurance does not touch Constitutional rights of the insured persons in the field of religious and other beliefs, and do not contradict the legislation of the Russian Federation, including the law on freedom of conscience and religious associations.

Under the terms of paragraph 4 of article 13 of the Federal law of 21.11.2011 № 323-FZ «On fundamentals of protection of the health of citizens in the Russian Federation» provision of information constituting a medical secret, without the consent of a citizen or his legal representative are allowed to implement the accounting in the system of compulsory social insurance.

Current legislation of obligatory medical insurance deletion of the personal data of insured persons from the unified state register of insured persons is not provided.

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USING THE DEFINITION OF «CONTRACTUAL OBLIGATIONS» IN THE CURRENT LEGISLATION

One of the oldest and most typical legal constructions there is an agreement. In the theory complete and unfolded type of studies about an agreement it was formed Roman civilest and lasted the object of reception on many ages. For this time a construction did not test a «agreement» some cardinal changes, however, taking into account development of public relations, it is modified. The modern stage of development of Ukraine is characterized the considerable increase of role value of agreements which especially arise up within the framework of the separate fields of law (civil, commercial but other). This tendency, foremost is connected with activation of participation of subject of law in the field of the legal adjusting, by stimulation of good behaviour.

Legal adjusting of contractual relations of economic appeal which is carried out, except for the Civil code of Ukraine, by a far enough normatively legal acts (aggregate of norms of the real acts which regulate obligation relations, it is possible to name an obligation legislation), gives shape these relations obligation legal relationships among which the special place belongs to the contractual obligation legal relationships (contractual obligation). Contractual obligation in a civil law – it obligation, that arise up on the basis of agreement (in a number of cases – on the basis of court decision), and mediate both property civil relations (contractual civil legal obligation) and economic property relations (economic-contractual obligation).

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GEOLOGICAL OFFENCES: PROBLEMS OF TRANSBRANCH CODIFICATION

The article is sanctified to the decision of problems of codified acts of geological and administrative legislation at opening of compositions of offences in the field of geological study of bowels of the earth, namely - violation of right of ownership on the bowels of the earth, requirements on the guard of bowels of the earth, rules and norms of realization of geological works.

The most widespread type of legal responsibility for violation of legislation about the bowels of the earth there is administrative. This type of responsibility is envisaged by Code about the bowels of the earth of Ukraine and Code of Ukraine about administrative crimes.

However comparison of corresponding norms of the indicated codified acts testifies to the presence of row of problem questions of transbranch character.

The aim of the article is formulation of suggestions on permission of problems of codified acts of legislation about the bowels of the earth and administrative legislation at opening of compositions of offences in the field of geological study of bowels of the earth.

Existent compositions of geological offences divide in an administrative legislation on three groups: 1) violation of right of ownership on the bowels of the earth; 2) violations of requirements on the guard of bowels of the earth; 3) violations of rules of realization of works on the geological study of bowels of the earth.

As the detailed comparative analysis of binding overs of the indicated codes showed in them terminological disparities, out-of-date norms, blanks, take place in the legal adjusting, objective and subjective collisions.

In totality educed lacks of modern codified acts complicate not only of right application but also present problems in perfection of their codified constructions.

This research gave an opportunity to set forth certain suggestions on addition and change of existent releases of reasons of codified acts of administrative and geological legislation, and also to offer author's interpretation of the most ambiguous terms and concepts.

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PRINCIPLES OF CIVIL AND FAMILY LAW: COMPARATIVE LEGAL ASPECTS

The article examines the range of problems of current civil and family law through comparative legal analysis of principles system of two law branches. Based on the analysis the author gives his own forms definition of normative expression of principles. The role of the civil and family law principles is that they reflect in general form the essence of the relations governed by a particular branch of law. Since both the field of civil and family law regulates personal non-property and property relations that arise between the subjects and are based on the principles of equality, property independence of participants, the object and the method of law regulation of these two sectors is similar. It is proved that the general principles of civil and family law enshrined in regulatory legal acts of these sectors are similar in the main, and therefore are used in the same way. Additional arguments received the system of principles based on which we can conclude that the generalized prin-

ciples of civil and family law can be divided into two groups: general (which is fully characterized by both branches of law) and special (which belongs to the field of family law and does not prove its autonomy of civil law field). After analyzing legal doctrines of a number of scientists who advocate for the view that family legal relations are very similar to the civil matters, so must be included in the civil law and opposing that family law has all the characteristics of an independent branch of law.

It is proved that the principles of family law do not characterize the specified sector as an independent one of civil sector because by virtue of their nature principles perform ancillary in dealing with such issues. However, analyzing the problematic of the study we can note that identical principles in its content are inherent both in the civil and family law field.

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PROTECTION OF THE RIGHTS AND RESOLUTION OF CIVIL CASES AS INDEPENDENT TASKS OF CIVIL PROCEEDINGS IN THE ASPECT OF IMPROVING OF ITS EFFICIENCY

Matters relating to objective of civil justice are important for the science of civil proceedings, since the quality of their performance is a criterion for evaluating the effectiveness of civil proceedings and a key factor in ensuring efficient restoration of rights. In this regard, it is interesting the question of correlation between the tasks of civil proceedings as «protection of rights» (which was established by CPC from 1963), «adjudication and resolution of cases» (which was established by CPC from 2004) and «settlement (resolution) of disputes» (which was established by Concept of improving the justice system), and which of these tasks should be the main civil proceedings in Ukraine and what are the main directions of its effectiveness.

Defining the objectives of civil proceedings protection of rights and legitimate interests, CPC from 1963 «protection of the rights» was connecting with the execution of protection of rights corresponding ways, and counteraction to violation of law and order. This was due to the active role of the judge and partial intervention of court in discretionary and competitive rights of the parties to ensure the execution specified objective: court was rightly assisting in clarification of the claims and on its own initiative obtained and researched the necessary evidence for that court was fully responsible.

Change this task of civil proceedings in the new CPC from 2004 to another – «consideration and resolution of civil cases» was due to the expansion discretionary and competitive rights of participants of

case and therefore provision to court of a passive role in clarification of the circumstances of the case and checking their evidence and deprivation of its duty to assist the claimant to properly clarify the claim. Author made it clear that «the consideration and resolution of civil cases» as a problem of civil proceedings, means «consideration and resolution of a legal issue» (legal dispute - conflict).

It is concluded that, at present, civil proceeding has the task (not objective) as a dispute resolution, that is the final elimination of the legal conflict between the parties, which in its content differs from the task of civil procedure for the CPC from 1963 («protection of right»), which concerned substantive side of justice and pointed to its effects, rather than a process which is civil proceedings. However, «adjudication and resolution of civil cases» related to procedural side of proceedings, characterizing its process on elimination of legal conflict as well as the protection of rights and interests, if a violation occurred.

Author believes that an indication in objective of civil proceedings on «resolving» means the successful completion of a civil dispute, i.e. the final elimination of the legal conflict between the parties. This is possible when the plaintiff's right that was violated obtained judicial protection, has been restored or the victim received fair compensation, or when the court authoritatively confirm the absence of legal disputes between the parties and the absence of the plaintiff's rights, protection of which he asks, or in case of availability of disputed relationship court will determine either failure to prove or illegality of the plaintiffs' claim, thereby protecting the interests of the defendant.

Also it is proved that the efficiency of execution of this task of civil justice is possible only with the introduction of procedural activity of the court and imposing on him of the duty to intervene in discretionary and competitive rights of the parties when necessary for lawful purposes.

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THE CORPORATIVE LAW EVOLUTION ON THE TERRITORY OF UKRAINE: FROM OLD RUSSIAN LAW TO LAW IN THE BEGINNING OF XX CENTURY

The purpose of this article is the study and generalize experience of activity of corporations as legal form of Association of capital for business, research legal foundations of corporate relations on the territory of Ukraine from ancient times to 1917.

The economy of Kievan Rus had a commercial direction. It had not specifically the feudal forms, inherent in Western Europe. In Kyivan Rus not only the boyars, but the Prince were in business, in contrast to the medieval Western Europe, where the land aristocracy avoided trading.

In the 20-ies of the 19 century joint stock company appeared more often, and after the Crimean War their number is growing rapidly.

G. Shershenevich allocated the following types of companies: a) Artel; b) trade partnership; c) trust partnership; g) joint-stock company; d) stock company, a close analogue of modern limited liability company.

There are not the historical tradition of the existence of a separate commercial law in Kievan Rus and Russia. It law did not know dualism of private law.

Based on the foregoing, it is strange that the 19th century in Kievan Rus, Ukraine and Russia there is no specific procedure for trade disputes, no special courts. In 1808 was founded the Odessa commercial court, the first of the commercial courts of the Russian Empire. To the beginning of judicial reform of the 19th century, it was not unique. After the judicial reform of the 19th century the number of commercial courts began to reduce. The reason for reducing the number of commercial courts, commercial proceedings had no advantages over a civilian court proceedings, and therefore a separate commercial courts was unnecessary and remained exclusively in the large commercial centers. Commercial courts liquidated in 1917, when a Decree of Court No. 1 of the Soviet government abolished.

All disputes on trade turnover, disputes between companions, disputes between owners and salesmans were related to commercial courts of The Statute of Trade Proceedings. All the disputes of joint-stock companies were related to civilian courts, without exception. At the same time, given the low numbers of commercial courts, most of the commercial disputes always has been considered by the civilian courts.

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PROBLEMS OF RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARD OF INTERNATIONAL COMMERCIAL ARBITRATION

In the article «Problems of recognition and enforcement of arbitral award of international commercial arbitration» is considered some issues of recognition and enforcement of arbitral awards.

In theoretical terms and in accordance with the legal regulation of international commercial arbitration decision on its legal nature are classified into domestic and foreign.

It is observed that the decision of a foreign tribunal is recognized and implemented by the conditions of their recognition, as provided by international treaties or reciprocity principle in agreement with a foreign country. As for the «internal» arbitral awards, the mode of execution should be enshrined in national legislation, although it may involve different legal regimes to implement «internal» and «foreign» arbitral awards. It is considered controversial

issues of recognition and enforcement of foreign and domestic arbitral awards.

As for recognition of a foreign arbitral award, it is decisive that the state court to which a petition is filed is not entitled to view the award on the merits. At the same time as the procedures for the recognition and Enforcement of foreign arbitral awards not considered as one of the types of international legal assistance, as some authors as arbitration courts of their status are not subjects of international assistance.

Especially the issues of recognition of a foreign arbitral award that requires enforcement. Although academic point articulated position, according to which in the absence of the CPC of Ukraine special rules for recognition in the country of the foreign arbitral award that requires enforcement shall apply the rules of Art. 10 Decree of the Presidium of the Supreme Soviet «On the recognition and enforcement of foreign judgments USSR and arbitration» from 21.06.1988 he seems convincing, we believe that from a practical point of view, state courts still possible to implement a procedural action taken as referring to the statement of recognition of a foreign decision that does not require enforcement.

Also, the article analyzes the practice of recognition and enforcement of arbitral awards in the context of the powers of the competent court which has the right to decide on the recognition and enforcement of arbitral awards.

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COURT DECISIONS IN DIFFERENT BRANCHES OF PROCEDURAL LAW: POSSIBILITIES OF UNIFICATION

The article analyzes the views of scientists concerning the definition of court decision in different branches of procedural law. The author singles out characteristic features of the institution of court decision such as: a) court decision is a procedural document, which is drawn up in writing; b) court decision is a juridical fact, its content being compulsory for execution by all natural and legal persons in Ukraine without exception; c) court decision is made exclusively by court according to the norms of procedural codes (civil, economic and administrative) in the name of the state and is proclaimed in the name of the state; d) court decision determines the essence of substantive dispute and the procedure of its resolution according to the norms of substantive and procedural law; d) court decisions have certain structure with specific content of each part; e) each court decision contains the provision concerning the possibility of appeal according to certain procedure.

The author differentiates the concepts of court decision, judicial decision and court resolution and proves that presently the concept of court decision is a traditional

concept and thus it is inappropriate to substitute it for the concept of court decree.

The author stresses on the possibility of change of the structure of court decisions in simple claims by withdrawing its declarative part. The author believes that the court must be obliged to present full unabridged text of court decision only in cases when the decision is appealed against or a complaint is lodged against it.

The study proves that the essence, the structure and content of a court decision in different branches procedural law are of the same type, which means that it is possible to unify the institution of court decision in the Integrated Court Procedural Code.

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CONCEPT AND TYPES OF PARTIES TO CORPORATE LEGAL RELATIONS

The article is devoted to the definition as well as features and types of parties to corporate legal relations. The study defines parties to corporate legal relations as persons who have in possession subjective rights and obligations enshrined in the regulations, enter into corporate governance relations and exercise of corporate rights. The main features of parties to corporate legal relations are determent by following: 1) parties to corporate legal relations enter into corporate governance relations and exercise of corporate rights which constitute the object of corporate relations; 2) the formalization of parties means that entering into the corporate relations should be carried out by the rule of law; 3) exceptional number of parties means that some parties to corporate legal relations may enter only into corporate relations and have no powers to enter into other business relationships (eg, bodies of corporate governance and employees of the corporation); 4) the presence of parties with special status (founders, shareholders, corporate governance bodies, etc.): 5) the subordination of entities - corporate relationship is hierarchical and clearly prescribed by law and regulations, as well as local regulations of the corporation; 6) conflict of interests of corporate legal relations. Special attention is devoted to the determination of types of parties to corporate legal relations on the following criteria: 1) entering into other business legal relations: parties to corporate as well as other business legal relations (the corporation itself, its members, creditors, government agencies and local government), exclusively parties to corporate legal relations (bodies of corporate governance as well as group of shareholders, group of companies and employees of the corporation); 2) separation of parties on the basics of corporate governance and exercise of corporate rights.

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CONCERNING THE NOTARIAL FORM OF CIVIL RIGHTS PROTECTION

Creation of an appropriate mechanism of legal protection is an important guarantee of exercising rights and freedoms of parties to civil law relations.

The subjective civil rights are protected in accordance with the procedure established by law, i.e. through proper forms, means, and ways of protection.

The civil law books traditionally consider two forms of protecting civil rights: jurisdiction one and non-jurisdiction one.

The jurisdiction form of protecting civil rights and interests can consider the general procedure for protecting rights in courts and the special protection procedure: administrative one and notarial one.

The notarial system as an institution of a civil society protects the rights guaranteed by the Constitution and laws of Ukraine and the legitimate interests of citizens and legal entities through notarial actions performed by notaries on behalf of the state.

The fact that a notary acts on behalf of the state provided grounds to certain researchers for attributing protection of civil rights by a notary to the administrative form of protection, explaining this by the fact of appointing a notary and by control over fulfillment of a notary's professional duties exercised by a justice authority, as well as for considering the notarial bodies either as government agencies with an administrative nature of activities or bodies that are actually administrative ones, but have a special status.

In order to answer the question to which protection form we have to refer protection of civil rights by a notary, at first it is necessary to take into account that the nature of a jurisdiction body is determined by the nature of its activities rather than the specifics of its creation and control over such activities.

In terms of their functional nature, activities of notaries are closer to those of courts as they are carried out for the benefit of individuals and legal entities and aim at controlling and regulating civil law relations.

Unlike diverse ways of protecting civil rights in court, pursuant to Article 18 of the Civil Code of Ukraine a notary protects them only in one way: by writing a notary writ on a debt instrument in cases and in accordance with the procedure stipulated by law. This notarial action is the principal out-of-court undisputable way of enforcing an obligation, which enables a creditor to have its rights, violated as a result of a debtor's failure to discharge its obligations, promptly restored with the help of a notary, providing that certain formal requirements are met.

It should also be noted that protection of rights by notaries is not final. Actions of notarial agencies may be appealed against in court.

A right to protection is exercised by each party to civil law relations at its own discretion and own will. At present an authorized representative has a wide range of choice of forms of protecting civil rights and interests. In every specific case, a person whose rights and interests have been violated decides on his/her own on the choice of remedies and their practical implementation, efficiency and expediency of using a specific form of protection.

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THE PROBLEM OF THE LEGAL NATURE OF THE AUCTION ANNOUNCEMENT DEFINITION

The auction is an effective way of property realization, which includes the difficult mechanism of actions of persons who take part in it. One department of this mechanism is a performance by the organizer of the auction of a duty to placement of the announcement of carrying out auction. The legal nature of this announcement in legal science and practical activities is considered ambiguously that the situation leads to emergence conflicts between auction participants and can be the basis for cancellation of results of auctionin a judicial order and recognitions of the contract of purchase and sale of goods at auction in valid. These circumstances cause the relevance and need of research in this branch. In article doctrinal approaches are given to definition of the legal nature of the announcement of tendering which exist in the domestic law and inscience of foreigncountries. The careful analys is of the legislation of Ukraine is carried out to branches of auction commodity turn over, the case law of the states of Anglo-American law system on the matter is investigated. By results of research doctrinal definition of the legal nature of the announcement of carrying out the economic auctionis offered.

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ON THE ISSUE OF DELIMITATION OF LEGAL RELATIONSHIP NATURE WHILE IMPLEMENTATION OF STATE CONTROL OVER ECONOMIC ACTIVITY

Controlling relationship in the sphere of economic activity is the relationship between the Government of Ukraine in the person of its authorities that exercise administration of economic activity and controlled economic agents.

In this case state authorities are the participants of economic activity that fulfill economic-organizational function. At the same time any controlling state authority is the administrative authority and the methods that are used by this authority are regulated by the administrative law. As we can see the nature of this relationship has dual character. For example, controlling authorities impose administrative-econom-

ic sanctions to economic agents for the breach of legislation commitments in the terms of organization and conduction of economic activity in cases within the law. At the same time relationship between above-mentioned authorities has organizational-economic character. As a result further research is needed for the question of delimitation of organizational-economic relationship, that is understood as the control, and administrative-organizational – control over economic activity of economic agents.

It is assumed that state control is the vertical relationship between economic agents and controlling authorities and it is carried out in tough relationship «power-subjugation». On the part of government administrative function is carried out by state authorities that according to their competence use instruments of control that are based on specific principles of state influence over controlled object. State authorities need to be subordinated to economic law in order that state control in the sphere of economic activity carries out economic function. That is the economic-legal essence of organizing and carrying out the state control in the sphere of economic activity. And only such legal relationships between controlling authorities and economic agents reflect the nature on the organizational-economic legal relationship that is developed by economic law.

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LEGAL NATURE OF COMMERCIAL AGENCY

Changes in the socio-economic system of Ukraine, Ukraine's accession to the WTO, the process of integration in the global economy will further the development and strengthening of market institutions, one of which is commercial agency.

Institute of Commercial agency is relatively new. It was not in the Civil Codeas amended in 1963, it is not in the current Civil Code of Ukraine. The need for research in stitute commercial agency due to theoretical and practical components, since to dateno single pointof view ofitslegal nature. Proper understanding of commercial agency institute will minimize errors in the implementation of agency contractsin the practice.

The purpose of the article - to consider the legal nature of the Institute of Commercial agency in Ukraine economic relations, to analyze some theoretical problems of its definition and meaning, and relationship with other legal categories.

Commercial agency - a type of business relating to the provision of services. Under the current legislation of Ukraine Commercial agency may be in stock, insurance, trade, tourism, mediation associated with the issuance of securities, shipping agency and others.

The article explores some of the theoretical issues regarding the institution of commercial agency and its relationship with the institution of commercial repre-

sentation. The article discusses the various points of view on the concept of «commercial agency».

In a market economy Ukraine importance of commercial agency grows,expands the scope of the brokerage relationship. On the one hand, the appeal to the agent can resolve some issues, save time and moneya person has asked for help from agent. However, in some situations the possible misuse of agent. Institute of Commercial agency is a legal phenomenon that gradually develops. Category mediation in a variety of values used in the regulations, but the concept of agency is legally uncertain. Currently, the only scientific approach to the interpretation of the terms «commercial agency» No, the concept of commercial agency is the subject of scientific debate. Commercial intermediation as a phenomenon and a legal category requires further theoretical research and legislative regulation.

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TO THE QUESTION OF CLASSIFICATION MORTGAGE SERVICE

The article is devoted to the research of the scientifically – to theoretical research of legal nature, conceptual bases of mortgage as difficult legal category in the civil law of Ukraine, classification of mortgage.

Separate attention is sanctified to the classification of mortgage in the civil law of Ukrain and scientific efforts.

The analysis of operative Ukrainian legislation, it's law application practice, foreign countries' legislation and scientific literature allows to draw some theoretical conclusions and concrete proposals on application and improvement of definite laws regulating the realization classification of mortgage.

In-process it was to consider fundamental principles of becoming and action of mortgage only, and after the point of view there is yet a whole package of questions which need consideration and revision: development of sphere of notarial services, evaluation and insurance activity, presence of the proper markets of valuable paper, selection at legislative level of types of mortgage. But not because of it perspective potential of mortgage relations in Ukraine is considerable enough and gradually will be realized on condition of acceptance of the proper normative acts which in in a complete measure pertvorili legislators of norm in operating.

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MECHANISMS OF PUBLIC ADMINISTRATION COPYRIGHT PROTECTION TO PRODUCTS IN THE FIELDS OF SCIENCE (PLAGIARISM INTERFEERENCE)

Ukrainian universities, institutes and research and scientific and technical institutions deepen cooperation with foreign universities, institutions and other organizations. This makes it necessary to follow the rules of intellectual property on the results of scientific activity. The implementation mechanism to combat plagiarism in research activities is an important public policy.

Violation of copyright works in science occurs in research activities. There are cases in defense of theses for the degree. Manifestations of plagiarism in academic work harms the reputation of universities and research institutions. Program plagiarism detection in academic works is insufficient. Radical mechanisms should be developed to combat plagiarism in science.

Research – an independent or collective research bots author or group of authors to develop a scientific problem. The complexity of this process sometimes leads to the election of a simplified approach. It is to use the results of other research activities of authors of scientific papers. Such borrowing may be by generally accepted rules of citation. This is facilitated by applicable law. Violation of these requirements is a violation of intellectual property copyrights to the works of science. Perpetrators must be held accountable.

Article 8 of the Law of Ukraine «On the copyright and Related Rights» stipulates that product in the science is subject to copyright. Moral rights of the author protected in perpetuity. Article 50 of the Law of Ukraine «On Copyright and Related Rights» states that plagiarism - a publication (publication), in whole or in part, someone else's work under the name of the person who is not the author of this work, which in turn is a violation of copyright works in science, which gives rise to equitable relief. Author of scientific works, or other person who has acquired copyright research work has the exclusive right to use this work in any form and by any means, including permit or prohibit use of the work by others.

Ukraine has established a mechanism for state management of copyright protection to works of science. Its efficiency is the results of the Certifying Board of the Ministry of Education and Science of Ukraine. However, the results of its operations with signs of selectivity. It is proposed to introduce liability for supervisors applicants candidate degree and official opponents deprivation of Science degree in case of plagiarism in the work of job seekers, the protection of which they were given positive testimonials. For detecting cases of plagiarism in his thesis for the degree of Doctor of Science, the responsibility is to be distributed not only in the official opponents and scientific consultant who provided positive testimonials, but also to further the special Academic Council. Membership of the Board after the determination of the

award of the degree by dissertation work in which plagiarism is detected, it is necessary to prohibit all take part in specialized academic councils. The measures provide a sound barrier on the way of plagiarism in scientific research.

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THE LEGAL NATURE OF THE LETTER OF REQUEST (LETTER ROGATORY) IN THE CIVIL PROCEDURE

The legal nature of the letter of request (letter rogatory) in civil proceeding, provisions of the legislation in force and theoretical approaches of scientists in this field are considered in the article.

On the international level such matter is governed by three basic conventions:

- The Hague Convention on Civil Procedure 1954;
- The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965;
- The Hague Convention on Obtaining Evidence Abroad in Civil or Commercial Matters1970.

Letter of request is an instrument in judicial mutual assistance which is undertaken as a part of civil proceeding in relation to the needs that appeared during the proceeding and the resolution of this urgent issue cannot be solved any other way but to refer to the institution of the letter of request.

A Letter of Request is a document having a procedural form that serves as an instrument which enables carrying out civil proceedings and their expeditious providing. Execution of the letter of request is one of the constituent elements in the implementation of legal aid in international civil procedure.

Thus we cannot define letter of request as a kind of mutual international assistance because it will be not sufficiently correct. We also cannot say that it is a type of mutual legal assistance. That's why letter of request is an effective mechanism by using which mutual court assistance can be provided.

At the current stage of development, the urgent matter is to define the nature and content of the letters rogatory since there is scientific debate about the legal nature of this institution. Some scholars view it as a distinct kind of mutual legal assistance, others reckon it only as a mechanism of assistance. At present there is urgency to solve this issue, because it is crucial for the development of both scientific and legislative activities for improving its functioning.

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MEDICAL RIGHT IN THE SYSTEM OF LEGAL PREPARATION OF HEADS OF MEDICAL AND PREVENTIVE ESTABLISHMENTS OF UKRAINE

The sphere of health protection needs most attention from the state because united the whole complex of public relations to that it is possible to take first of all, relations that arise up in medical activity (diagnostics, treatment of patient, surgical interference, sphere of guard of maternity and childhood, is in the state, prophylaxis of diseases, question of medical examination of capacity and ets.) financial and administrative. A situation that was folded gives to us an idea that most medical workers of establishments of health protection have a superficial idea about the legislative providing of the activity. Question of being informed, legal responsibility that is set by a current legislation for offence in the field of a health protection must be studied by doctors.

The program of Ministry of health Ukraine is ratified at state level in relation to preparation of organizers of health protection, it provides passing of cycle of thematic improvement, during that listeners will get the necessary volume of theoretical and practical knowledge from a medical right, and also will provide the proper realization of official and professional duties in the field of a health protection.

For the study of this cycle an operating normatively-legal base is used, beginning from international-legal standards that are basis for the study of legislation of Ukraine about a health protection.

A medical right must come forward as basic industry in the state that regulates legal relationships that arise up in the process of grant of medicare, medical workers must understand that it is necessary to spare more attention to the matters of law in modern terms. First of all this will give a confidence in the rightness of the actions and will deprive them consequences that can bring in very large changes to their professional height.

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THE CURRENT STATUS OF THE CONCENTRATION OF ECONOMIC ENTITIES IN THE ECONOMICS OF UKRAINE

In the scientific article entitled «The current status of the concentration of economic entities in the economics of Ukraine» the author based on data from the annual report of the Antimonopoly Committee of Ukraine for 2012 analyzes the process of the economic concentration in the in the context of the Ukraine's integration into the global economic community, especially the aim Ukraine to sign an association agreement with the European Union. Also, the author considers the problem of consolidation, primarily on the legislative and the theoretical levels, of the basic concepts in the field of competition, focusing on the lack of determination of the concentration of economic entities and the concentration of capital and availability on doctrinal level set of proposals that have their place, but after their systematization. The contemporary forms of the concentration in the leading industries of Ukraine are highlighted; allocated specific features of the concentration of the capital in the domestic economy; concrete examples of the main forms of classification of concentration of undertakings and factors that stimulate the processes of concentration and its most common species in recent years are points; discusses the positive and negative effects of economic concentration processes, so-called «welfare standards». Also, special attention is paid for the bodies of state control over economic concentration processes, emphasizes the positive and negative features of their work. The article examines the membership and work of Ukraine in the international organizations of the development of competitive relations and the national legislation, highlights his progressive positions and prospects for further development which based on the economic situation in our country.

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PROCEDURAL AND LEGAL REGIME NATURE OF SPOUSE SEPARATE LIVING IN UKRAINE AND POLAND: COMPARATIVE LEGAL ASPECTS

The article is devoted to the comparative aspect of procedural and legal nature cases clarification arising from the establishment and abolition of the marriage separation regime according to the current civil procedure legislation of Ukraine and Poland.

The main approaches of suitability clarification of spouse separation regime practice, goal and grounds of its establishment in Poland and Ukraine have been determined.

Common and distinctive features of separation mechanism in civil procedural law of Ukraine and Poland are found out. A number of controversial theoretical and practical problems of legal separation implementation in Ukraine are resolved; it will facilitate the harmonization of civil procedural legislation of Ukraine with European legislation.

The author states if a dispute arises between the spouses round the separation regime it will be considered actionably otherwise it will be considered the special procedure.

It is shown that a way to reconcile the couple – a regime of forced separation of spouses will contribute to the preservation of the family from hasty and uncalculated decisions if it is not in contrast to public morals.

It is proved that the civil procedural legislation of Ukraine does not reconcile imperatively the issue of the term of separation regime. Therefore separation can be installed with the definite and indefinite period of time for which such a regime is established. The author thinks that to make identification provision in the current legislation of establishment of three-year period of separation by analogy of Poland legislation.

It is analyzed the introduction of civil procedural law of Ukraine, one of the types of civil proceedings where examine a case of spouse separation regime that is practical and expedience.

Some specific proposals as for introduction of changes and amendments to the civil procedural legislation of Ukraine for the purpose to adapt it to European standards have been distinguished.

LABOUR LAW;
LAW OF WELFARE SECURITY

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THE ROLE OF THE NATIONAL SERVICE MEDIATION AND RECONCILIATION IN THE NEW LABOUR DISPUTE RESOLUTION SYSTEM IN UKRAINE

The article defines the legal status of the National mediation and reconciliation service from the point of view of such characteristic features as legality and legitimacy of a governmental body, public legal nature, actions of officials having special powers, administrative and territorial division of the system of governmental bodies, governmental enforcement.

The author emphasizes that by using its powers the government being represented by the National mediation and reconciliation service makes the government's interest compulsory and realizes it through special bodies enforcing it indirectly if it is necessary. Specific nature of governmental enforcement in the activities of the National mediation and reconciliation service is connected with its specific legal status, which is supposed to mitigate contradictions instead of aggravating them.

In the new conditions the role of the National mediation and reconciliation service should be changed considerably. It is presupposed that the National mediation and reconciliation service will acquire additional powers, functions and rights concerning extrajudicial labour disputes resolution via establishment of a corresponding structural unit, which will be financed in order to exercise the following powers, functions and rights:

- contribution to labour dispute resolution;
- organization of labour arbitration courts, securing the execution of their resolutions;
- appointment of independent mediators and support of their activities;
- formation and introduction of the National labour dispute register;
- providing for professional training of independent mediators and labour arbitrators, introduction of registers of labour arbitrators and independent mediators;
- normative and legal support of labour disputes resolution;
- prognostication of labour disputes and their prevention;

Institutional development of the National mediation and reconciliation service, i.e. expansion of its potential, its organizational, legal, economic and personnel possibilities in the system of labour disputes resolution, must create an efficient mechanism of labour disputes resolution based on best European standards and experience that will be used by employers and trade unions in their social dialogue and dispute resolution, while the government will secure basic rules and give basic tools for their final resolution.

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DIFFERENTIATION OF BASES AND TYPES OF LAW RESPONSIBILITY FOR PROFESSIONAL FEATURES INTERRUPTION

Performance of professional functions is important part of the modern people practice. Deviations cannot be excluded from the standards of quality and safety for a variety of reasons that may cause negative property, personal, environmental and other impacts. Lack of interest of society as they occur these effects leads to a need for creation of a system of technical, organizational, managerial, educational, psychological, physical, legal and other means aimed to minimize the number of non-fulfillment of professional features. A special place is occupied by the system of legal regulations, differentiated by various branches of law and establishing a variety of incentives for the proper performance of his or her professional duties, and various penalties for the breach of professional obligations and rights.

A combination of motivation and responsibility – is justified and legitimate device of legal prophylactic effect. Their comprehensive study is a prerequisite for a full understanding of the legal system of prevention of occupational disorders. The main attention is paid to the design and application of legal means to respond to already committed violation of professional features. This reaction is called the legal liability in law.

The question of the delimitation of administrative offenses of crimes attracted an attention of lawyers in the theoretical and practical aspects. Science has gained considerable experience and knowledge in this field to date. That is why we pay attention to some common criteria. We are interested mainly in the level of legislative decision in this case.

Administrative offense and the offense would apply equally to a group of public wrongdoing. Therefore, the distinction between them cannot be made on the grounds of the form of disturbed interests. Public danger is the criterion of distinction.

Public danger of offense of professional functions is determined by two main features: the specifics violated professional rules and also as the presence and size of the consequences of such violation. However, not all of these criteria can claim the role of differentiation.

Thus, the violation of professional features, suggests the possibility of bringing a person to the responsibilities of the different types, depending on the content of the disturbed and characteristics of damages according to function law. This fact testifies about the broad set of legal means influence on violators of labor discipline. On the other hand, this makes a serious problem of demarcating and combining of these types responsibility.

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THE LEGAL NATURE OF THE EXPLANATIONS OF THE VIOLATOR OF LABOR DISCIPLINE

Observation of the labor discipline at companies, institutions and organizations is ensured by the way of creation of the necessary institutional and economic conditions for the the normal work of high performance, conscious attitude to work, persuasion, attitude development, encouragement for dedicated work. Event of a non-performance or improper performance of an employee's labor duties is the basis for his subjection to disciplinary action (Art. 147 of the Labour Code of Ukraine). Extent to which disciplinary actions ensure labor discipline depends on the employer's compliance with the statutory order (Art. 1471-149 of the Labour Code of Ukraine) of their imposition, including clarification of all the circumstances of the violation committed. At this stage of the disciplinary process, the violator has the right to defend actively against the accusations brought against him and to provide relevant explanations. They implement an individual's right to protection of the labor honor and dignity (Article 55 of the Constitution of Ukraine) and are an essential protection against unreasonable application of the actions. In particular, the violator's explanations objectively reflect an important feature of legal responsibility - to answer for their actions before decision on the punishment. They to some extent contain an assessment of the violator's behavior, sometimes - valuable information on the reasons and conditions of the violation.

The duty of the owner to demand an explanation from the violator of labor discipline is limited to the submitting of such a demand. Violator's failure to provide explanations is not an obstacle to the imposition of the action. Head of the Company implements the disciplinary authority using statutory procedure which externalizes itself in the stages of the protective legal relationship. In particular, he should demand an explanation from the violator of labor discipline, to evaluate them in conjunction with other circumstances of the disciplinary case, etc. Counter-duty of the violator is to give explanations. In case of the employee's refusal the owner anyway implements his disciplinary legitimacy and imposes sanctions.

Head of the company always has the right to apply actions as his right to hire is fixed directly in the regulatory acts. It is obvious that he has a right to demand an explanation from the violator. However, the Head competent to impose action is not always authorized to demand explanations directly and he commissions other members of the administration. It should be pointed out that the matter will be decided by construction of Section 1, Art. 1471 of the Labor Code of Ukraine. Managers mentioned in this Section «apply action» i.e. take the final responsible decision on the punishment. Therefore they have the right to entrust the preparatory work on demanding of the explanations and clarification of the circumstances of the violation to others persons of the administration. This conclusion is not in conflict with the law in force.

Equally important matters are the detailed fixing the the fact of the disciplinary

violation in order to remember the date of its commitment or discovery, to capture the essence of the violence and the guilt of the employee, to have a documentary basis for issuance by the Head of the company of the order (administrative order) on application of the disciplinary action.

Among all the possible materials of disciplinary proceedings the violator's explanation is the only evidence to which the law refers, confirming its special meaning for rendering decision on the punishment. The violator may present his defense, motives, reasons and conditions for commitment of the violation, to refute the accusation against him. For the owner the explanation plays important role of the source of information, serves the basis for developing of organizational technical and local measures for prevention of similar violations.

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PROTECTION OF LABOR RIGHTS TO GET WAGES IN TIME

The issue of labor rights and interests remain at the center of science of labor law in the modern period. Scientists' offers to complete the list of basic labor rights law to protect their labor rights and interests, including the possibility of seeking protection from jurisdictional authority, the ability to protect persons granted it the right to their own activities, including resort to methods of self-protection of labor rights.

Consider the developments of national scientists in the field of labor rights and interests of workers it is possible to determine the mechanism of protection of employee to get wages in time as set jurisdictional and no jurisdictional forms of organizational, procedural and procedural methods, substantive means to combat and prevent violations of this law and its renewal.

Forms of protection of employee to get wages in time is possible to define as the activities authorized bodies, employees and their representatives on the application provided ways and means by the legislation which are directed to prevent violations of this law and its renewal.

Jurisdictional forms of protection of employee to get wages in time should be considered protection of these rights of bodies dealing with labor disputes and supervisory and control over the observance of labor legislation. It is needed to include before jurisdictional procedure for resolving disagreements regarding payment of wages in time to no jurisdictional forms (settlement of differences in direct negotiations with the employee by the employer) and employee self-protection of the right.

LAND, AGRARIAN, ECOLOGICAL, NATURE RESOURCES LAW

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CODIFICATION OF THE AGRARIAN LEGISLATION OF UKRAINE: SOME QUESTIONS

The article analyzes the possible forms of the future codified act of agrarian legislation. The author grounds conclusion about the expedience of the developing of Basics of the agrarian legislation as a codified act of agrarian legislation. The value of such an act for the further development and improvement of the agrarian legislation of Ukraine is substantiated.

The author grounds the regulation, that Basics of agrarian legislation will play the role of base, the basis for further legislative activities in this area, ratifying strategic aims, directions and principles for the regulation of the corresponding social relations. This act codified agrarian legislation provides evolutionary (gradual) upgrade agrarian legislation, which is very important during the transformation of agrarian relations. It is alleged that the foundations of the agrarian legislation during the dynamic development of social relations are more acceptable form of codification than the Code; as such an act could allow legislators to respond to the needs of the practice of social relations through changes or additions to laws and regulations in force along with the basics.

Argument for the conclusion that the development of Basics of agrarian legislation is justified also on the basis of implement of Ukraine's agrarian legislation to complex branches of law, because the rules to be contained in this act, will ensure regulatory huge complex of different content and legal nature of agrarian relations.

Simultaneously, the author states that, in future the agrarian legislation could serve as a base for the development of the Agrarian Code of Ukraine.

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TO THE QUESTION OF NOTION AND CONTENT OF PRINCIPLE ENVIRON-MENTALIZATION OF AGRARIAN PRODUCTION AS PRINCIPLE OF AGRARIAN LAW

In the article analysed scientific attitudes to definition of term principle environmentalization of agrarian production, in terms of which posed authors definition of this notion and estimated its content.

For today one of determining principles of agrarian right principle of ecologization of agrarian production becomes. Not only theoretical but also large, practical value has this principle. In fact his fixing in a current agrarian legislation will be instrumental in the ecologization of agrarian legislation by development and acceptance of new norms, directed on ecological development of agrarian production in particular and agriculture on the whole. Process of ecologization, that filling with ecological maintenance of legal norms, today overcame almost all industries of national legislation: and earth, and agrarian, and economic, and criminal and others like that.

Inhibition of principle of ecologization of agrarian relations is especially important at the production of agricultural goods for the separate categories of population, and also at the production of organic agricultural goods and for development of organic agriculture in Ukraine on the whole.

Principle of ecologization of agrarian production can be defined as the special, of a particular branch principle of agrarian right, which shows by itself leading position-requirement of agrarian legislation in relation to the normative fixing and practical realization of ecological imperatives by all subjects of agricultural production activity with the purpose of defence of environment, minimization of negative influence of anthropogenic factors, on him, maintainance of stable equilibrium of ecosystem, rational and ecological natural resource use in the process of their activity, and also production of high-quality, ecologically safe, agricultural goods of vegetable and animal origin.

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PROBLEMS OF FORMATION OF LEGISLATION IN THE FIELD OF ENVIRONMENTAL SAFETY OF OIL AND GAS EXCAVATION IN UKRAINE

It is given the current scale of oil and gas in Ukraine and the steady growth of the production, an important factor in the successful implementation of the environmental strategy of development is to create the best legislation on environmental safety of oil and gas excavation as a basis for qualitative regulation of social relations in this area.

Thus, implementation of this type of business as the oil and gas production poses a potential threat to environmental safety, for environmental risk in this type of activity occurs even without the presence of any emergency, pollution can also occur in normal operation of oil and gas wells. In such circumstances, it is extremely important that you have adequate legal impact on social relations arising from the extraction of oil and gas, and determine the relevance of the chosen topic. The relevance of this study is also in the territory of Ukraine without any comprehensive studies on the regulation of the environmental safety of oil and gas in Ukraine in general, and the characteristics of the legislation on environmental safety during the conduct of the above business in particular.

The article characterized the legislation of Ukraine in the field of environmental safety of oil and gas excavation, classification regulations in this area through a system method. Attention is focused on the fact that oil and gas production is environmentally unsafe activities, that is, to such activities, which are characterized by high environmental risk.

The main mechanism of formation and improvement of legislation on environmental safety of oil and gas excavation must be balanced state policy aimed at increasing the requirements and responsibilities of entities for environmental pollution and encouraging the implementation of environmental protection measures. For this purpose it is necessary to clearly define the principles of effective extraction of oil and gas in Ukraine to meet the needs of society in these strategic resources, preferential promotion of the voluntary commitments of contaminated land in their extraction and introduction of new environmentally friendly technologies in their processing.

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GENERAL DESCRIPTION OF THE PROBLEM LEGISLATION MINING IN AUSTRALIA, UK, USA, FRANCE AND CHINA

Background research of mining laws of foreign countries, because today in Ukraine is extremely problematic implementation mineral resources use. Investigated mining law in Ukraine is not isolated from the mining rights of foreign countries, it interacts with it, experiencing its effects and, in turn, affects him. Therefore, it is to further the development of mining rights in Ukraine should learn from the experience of foreign countries, to implement the relevant legal provisions.

The objectives of this research are to study overseas mining rights on the basis of the comparative method. In practical terms, comparative legal analysis of international mining law plays an important role in the legislative and enforcement activity in the international legal practice and interpretation of international legal acts, and therefore the future of mining rights in Ukraine.

The article discusses the basic principles of mining legislation of Australia, UK, USA, Canada, China, France, the emphasis on the elements of public law and private law regulation of business (business) activities in these countries. In particular, the comparative aspect addressed: principles of regulation of ownership of subsoil and mineral resources; grounds of rights for subsoil use, the ratio of land user rights and use of mineral resources (entrepreneur) legal status of the property, the main approaches in the field of taxation. The analysis carried out by studying the special legal literature, information from publications in periodicals, as well as a special self-translated foreign literature.

As a conclusion, it was found that the mining law in each of the following countries has the feature strengths and weaknesses. Therefore, for the further development of mining rights in Ukraine should learn from the experience of foreign countries, certain rules to implement. It is through the experience of other countries, it is advisable to continue the development of mining law in Ukraine, resulting in possibly simplify mineral resources use.

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LEGAL MAINTENANCE OF PLENARY POWERS OF SUBJECTS IN RELATION TO DEFENCE OF ORGANIC PRODUCTION – ELEMENT OF ECOLOGICAL SAFETY OF UKRAINE

Providing of ecological safety through its component element – organic products, generates a necessity to carry out complex research of all aspects of related to such embodiment, in particular and plenary powers of subjects on the way of their defence. As such embodiment is new, the proper doctrine and legislative fixing needs research, correction and eventual introduction. The outlined stipulates connection of scientific search with subsequent practical application.

Taking into account absence in Ukraine of the special legislative acts in the field of organic production, it is needed to appeal to the bills in the field of organics and to select certain positions in relation to distributing of functions of the proper subjects, and also to add an analysis plenary powers of organs, which are foreseen Law of Ukraine «On the state system of biosafety at creation, test, transporting and use of genetically modified organisms». In fact, exactly on the right up-diffused directions of their activity efficiency of embodiment of the certain program, conception, legislative development, depends in everyday life of citizens.

Carrying out the analysis of current legislation of Ukraine from the probed direction can notice that it costs to assert during the decision of question of maintenance of plenary powers of subjects, about to expedience of their fixing only by the laws of Ukraine, about development of clear structure with concretely certain plenary powers, that as a result will entail simplicity in control, application of responsibility, in the case of non-fulfilment of normative positions, not piling up of the proper organs the ramified system, but on the way of embodiment of organics in agriculture must exist: operators and Commission, which will be provided with all complex of the proper rights, duties, will answer international standards.

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CORRELATIONS OF CONTROL AND SUPERVISION OF LAW ENFORCEMENT AGENCIES IN THE PROTECTION OF NATURE

The article deals with the concept, features and problem of coordination between control and supervision law enforcement agencies in the sphere of nature protection. The main focus is on the defining the ways to improve the system of state control and supervision in this sphere.

Absence of clear and unanimous definition of these terms in the legal act leading to the fact that they are often identified.

The author also points out that much of their power to protect and preserve the environment, environmental rights of citizens, law enforcement agencies and central authorities perform under the supervision and control. However, the ecological situation in Ukraine is very difficult to continue.

To determine the administrative and legal features supervision of environment must first examine its nature in relation to the control, as these two categories are closely interrelated.

Under the supervision of law enforcement agencies in the protection of nature refers to the activities of prosecutors, interior and central authorities, aimed at identifying the causes and conditions that contribute to the damage nature, their prevention, measures to eliminate prejudice and to bring offenders to the statutory responsibility for environmental enforcement.

CRIMINAL LAW, CRIMINOLOGY, CRIMINAL-EXECUTIVE LAW

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PUNISHMENT IN THEORY AND PRACTICE OF CRIMINAL LAW

The Criminal Code of Ukraine establishes goals of punishment. According to the Art. 50 part 2 of Criminal Code of Ukraine punishment is intended not only punish but also correction and prevention of new crimes of criminals and others.

Limitation of rights and freedoms should be applied only to achieve the goals of punishment as correction of the offender and to prevent new crimes of convicts and also by others persons as well.

The punisment applies to the guilty person for stabilization of social relations that have been affected after crime. And it is not enough to cause some mental suffering in return or to make some recompense for his crime. Society would not be better than the criminal in this case. The state should take care of correcting such person, to prevent crimes (this and others) in the future. Only in this way it is hoped to restore rules of law.

The correct solution depends from the issue violated the basic definition of the sense of punishment. The penalty is a punishment for crime. The content associated with the application to sentence convicted on some distress. This is a necessary feature of any punishment.

Penalty is the essence of punishment is particular limits of the rights and freedoms of the convict. The volume of punishment depends from character and greatness of crime. The punishment is harder when the crime is great.

So, the punishment is not retribution for the crime, but some kind of limitations, enforcement actions, which are made to achieve aim of further correction of criminal. So, the punishment can not be listed in the law among the goals of punishment.

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DIRECTION AND CONTENTS OF THE ALL-SOCIAL PREVENTION DRUG-RELATED RECURRENT CRIME

The article is devoted to system of prevention drug-related recurrent crime, which is general for society. The main measures of general prevention drug-related recurrent crime are described.

Ukraine has a system of all-social prevention drug-related recurrent crime. This system is based on conventions, Constitu-

tion of Ukraine and laws. The main measures of all-social prevention drug-related recurrent crime are realised following some directions. Such as: improvement of legal regulation activity related to the prevention of crime in drug trafficking; prevention of drug addiction, addiction treatment; implementation of social patronage of persons which were dismissed from prison.

Quality of the measures all-social prevention drug-related recurrent crime depends on the size of their funding. The system of all-social prevention drug-related recurrent crime needs improvement. It is necessary to create conditions for the anonymous addiction treatment; to improve accounting procedures of drug users; to develop a national program to prevent recurrent crimes; more specific duties of subject which realise the main measures of all-social prevention drug-related recurrent crime.

Special attention needs solving problems related with poor propaganda of healthy lifestyles, development education and science, overcoming indifference to the problems of drug abuse.

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PROVOCATION OF A CRIME: CRIMINAL-LEGAL ANALYSIS AND IMPROVEMENT OF CURRENT LEGISLATION

Forms of act expression of provocation in crime is socially dangerous act, active behavior of perpetrator. Forms of provocation can be varied on tips, hints, recommendation, suggestions and others. Provocation crime may also be oral in nature, manifest through gestures, writing, demonstration of any images and others. As instrument can be various means of transmission and storage of such information: telephone or facsimile, Internet, etc. Provocateur can also act secretly, through the creation of conditions and circumstances that cause a person to commit a crime.

Provocative actions must always precede criminal behavior of the person who triggered the objective side. Creating a situation that causes crime, must not only precede implementation of the act provoked by the person, but also preceded the emergence of that person's intention to commit the crime.

The starting point of provocation is an action aimed at creating a situation that is going to commit a crime. Final point is the appearance of a person to commit a crime or to take part in its commission.

The subjective aspect of provocation crime is characterized by direct intent and specific purpose, exposing the person. Direct intent indicates that the offender is aware of their provocative actions on the other person that it provokes, and wants to do the following.

Motives may be different for committing such an offense. For example: revenge, careerism, jealousy and so on.

The purpose of provoking a crime is an artificial creation of evidence of a crime or blackmail. Of course, the creation of evidence under this order, indicating the presence of a crime in the actions provoked person.

Provocation is in the form of expression as well as the provocative activities of law enforcement in practice.

Any premeditated crime could be provoked. In this connection, it is expedient to define provocation of crime as «deliberate unilateral actions of the person aimed on engaging a person who is provoked in crime with the aim to exposure the person in the crime which was done».

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AMENDMENTS AND SUPPLEMENTS TO CHAPTER VIII OF THE SPECIAL PART OF THE CRIMINAL CODE OF UKRAINE: PENALIZATION OR DEPENALIZATION?

Since the adoption of the current Criminal Code of Ukraine some amendments to Chapter VIII «Criminal offences against environment» have been made. The actions covered by the Art. 239-1 and 239-2 of the CC of Ukraine have been criminalized, sanctions of the Art. 240, 245, 247, 248, 249, 254 of the CC of Ukraine have also been amended and supplemented. In connection with that it is very important to conduct the analysis of the essence of these amendments and supplements to Chapter VIII of the Special Part of the Criminal Code of Ukraine on kinds and dimensions of penalties for the offences against environment, namely penalization (depenalization) of these offences.

Penalization is a process of establishment, expansion, enforcement of punitiveness for criminal actions as well as imposition of punishment. Depenalization is a process of restriction, softening of state forcing for committed offences as well as discharge of criminal responsibility and punishment.

On the basis of the analyzed amendments and supplements to Chapter VIII of the Special Part of the Criminal Code we can say that they penalize actions covered by Art. 239-1 (Misappropriation of soil cover (surface layer) of land), Art. 239-2 (Misappropriation of lands of water resources on an especially large scale), 240 (Violation of rules related to the protection of mineral resources), 247 (Violation of law on plants protection), 248 (Illegal hunting), 249 (Illegal fishing or hunting or any other sea hunting industry) of the CC of Ukraine. Concerning depenalization of offences against environment it is represented by amendments to Art. 245 (Destruction or impairment of forests) and Art. 254 (Wasteful use of lands). Therefore, we can state the fact of enforcement of criminal punishment for offences against environment.

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SOME ASPECTS OF COOPERATION BETWEEN THE LAW ENFORCEMENT AGENCIES AND THE COURTS IN PREVENTION JUVENILE CRIMES

The article deals with cooperation of the law enforcement agencies and the courts in realization of the tasks of juvenile justice on prevention of the juvenile crimes. According to the author studying of cooperation between the mentioned authorities is determined by the need to upgrade productivity, effectiveness and efficiency of preventive activity in combating juvenile delinquency. The tasks of cooperation, its types and legal forms have been defined on the basis of the uniform regulatory framework for professional activity of juvenile justice entities, including the law enforcement agencies and the courts. It is proved that coordination of joint activities on prevention juvenile crimesis the most important form of cooperation. It is concluded that there is no uniform system of agencies and institutions involved in protecting children's rights, imperfect legal regulation of coordination of government and non government institutions in the field of prevention teenagers' crimes. The court should be the basic agency called for ensuring coordination of agencies and institutions involved in protection of juvenile rights. However, in order to ensure consistency of acts in the sphere of juvenile crimes prevention there is a need to optimize activity of the law enforcement agencies, remove duplication of functions in the activity of agencies compelled by the law to conduct measures for juvenile crime prevention, fulfill necessary criminological analysis of the criminal law and other legal acts in the field of juvenile justice development.

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MEDICAL PROFESSION: PROBLEMS OF DETERMINATION OF CIRCUMSTANCES WHICH EXCLUDE CRIMINAL ACT

Practical activities in medicine often affect the human body in such way that it is possible to regard it to be the tresspass of the patient's physical inviolability, i.e. his health. Thus, determination of justification of medical staff actions in case of rendering medical help is urgent. It provides application of rules of institution of circumstances, which exclude maleficence of criminal intent. As provided by Criminal Code of Ukraine, the same circumstances in the area of medical profession are the following: a valid reason by which medical person is not able to perform his professional charge (article 139 of Criminal Code of Ukraine law), consent of the patient or his representative (agent) (article 141 of CC of Ukraine), act connected with risk (article 42), extreme necessity (article 39), circumstances provided for by law of Ukraine «On Transplantation of Organs and Other Anatomical Materials to Humans». In medical profession, danger of tresspass for person is typical. At that, medical activity is socially approved, and provided by law (i.e. lawful). Thus, exercise of professional functions by medical personnel is the key circumstance, which determines legality of his actions and excludes illegality and social danger. So, legality of tresspass in medical activity is necessary to be determined by legislative regulations of health protection and other enactments, which regulate rights and duties and professional activity of medical personnel.

Ukrainian legislation considers execution of euthanasia by medical person as a crime against life and it cannot be specified as a circumstance excluding criminal act.

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GENESIS NATIONAL LEGISLATION ON CRIMINAL LIABILITY FOR SEXUAL INTERCOURSE WITH A PERSON WHO HAS NOT REACHED PUBERTY

The history of the territory of Ukraine legislation criminalizes voluntary sexual intercourse with minors and young persons characterized by contradictory attitudes of society and state in this phenomenon.

The issue of protecting children from sexual abuse to some extent paid attention to the historic legal documents as «Russkaya Pravda», «Church Charter Grand Duke», «Lithuanian Statute», «Military Marking Peter I», Making the punishment of criminal and penal and Criminal code of the Russian Empire, Criminal Codes of the Soviet era.

However, it is a long time historically conditioned and acceptable was not public, and dispositive way to resolve the conflict that arises from the attempt on the sexual integrity of immature individuals. Fact voluntary entry into sexual intercourse with a minor victim by our ancestors regarded as special circumstances that did not provide grounds for severe punishment of the guilty. Soviet criminal law passed the age limits established for persons who have suffered from voluntary sexual relations with older persons. It introduced the concept of «a person who has not reached puberty», which was determined on the basis of forensic examination. It was also heavily responsible for those crimes.

In general, the development of domestic legislation on criminal liability for sexual intercourse with a person under the age of puberty, from ancient times to the end of the Soviet period is characterized by a gradual transition from private to public-law legal way to protect the sexual integrity of those who have not reached puberty, and enhance the state of health by applying more stringent penalties for such actions.

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CRIMINAL RESPONSIBILITY AND PUNISHMENT FOR FRAUD IN THE INDIA REPUBLIC: FOREIGN EXPERIENCE

In recent years, Ukraine has become apparent to scientists studying the trend of increased foreign experience and use it in different areas of law, including the criminal law, and development issues of fraud certainly represents a scientific interest,

particularly in comparative legal perspective. It should be noted that the problems of criminal liability and penalties for fraud at the national level have been successfully resolved a number of scholars, however, analysis of the Indian experience in these matters has not been.

Analyzing Criminal Code of India we reached the following conclusions: Indian lawmakers consider cheating as a comprehensive criminal institution that represented various forms and methods of committing the crime. Distinctive features of comparative legal aspect is that demarcates the Indian legislator own fraud committed by misrepresentation of other crimes related to the abuse of trust, and using the terminology construction as «dishonest». In India Criminal Code provides a more severe punishment than the sanction of the Criminal Code of Ukraine. The subject of fraud by Criminal Code of India can be a person of sound mind at the age of 12 years, and in some cases from 7 years. In our opinion, can not be considered appropriate to prosecute child using primary and (or) additional penalty of a fine, much less prescribe imprisonment.

Interesting in scientific terms is the position of the Indian legislator on a special subject of crime, it is a legal entity - the individual who committed a crime and a legal entity. In our opinion, such a position is very promising and can be implemented into national law (in particular, to adjust the provisions of Section XVII of the Criminal Code of Ukraine). Also in sentencing for fraud in Indian criminal law is provided as an alternative form of punishment by a fine or imprisonment, and the simultaneous appointment of these two penalties. We consider it appropriate to improve sanctions for fraud, following positive foreign experience.

CRIMINAL PROCEEDING, CRIMINALISTICS, OPERATIONAL INVESTIGATIONS

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CRIMINAL JUDICIAL POLICY OF UKRAINE IN THE SPHERE OF CRIMINAL PROCEDURE IN THE FORM OF PRIVATE PROSECUTION

The features of criminal judicial policy of Ukraine in the sphere of criminal procedure in form private prosecution, legal nature of criminal procedure in the form of private prosecution are investigated in the article. There are set some suggestions in relation to the improvement of criminal judicial legislation of Ukraine.

It is specified, that question about the criminal judicial policy of Ukraine in the sphere of private prosecution, legal nature of criminal realization in the form of private prosecution, as well as question about expedience of selection of this type of realization in the category of the special orders of criminal realization, nowadays calls an important scientific and practical interest. Insufficient attention is spared in modern criminal judicial literature to research of this type of criminal realization.

It is drawn conclusion, that providing the legal adjusting of criminal procedure in the form of private prosecution, a legislator tried maximally to protect interests of victim, give possibility to accept criminal procedure activity to him, to carry out criminal pursuit of persons, guilty in the feasance of such criminal offences, that directly touch rights, freedoms and legal interests of victim.

Position is argued that during realization of general tasks of public legal policy in the sphere of fight against criminality in part of defense of person, society and state from criminal offences, criminal judicial policy as its object has the protection of rights, freedoms and legal interests of participants of criminal realization, in particular victim from criminal offence.

On the basis of undertaken a study it is drawn conclusion that it is necessary to reasonably analyze the problem of complete or partial expansion of list of criminal offences that behave to this type of criminal realization in the form of private prosecution. It is expedient to work out conceptual principles of institute of private prosecution from the point of view of new Criminal Procedure Code of Ukraine.

To achieve the aim of increase of efficiency of realization of criminal judicial policy in the sphere of criminal procedure in the form of private prosecution, it is necessary to make alteration and adding to the 36th Chapter of the new Criminal Procedure Code of Ukraine.

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NOTION AND CRIMINALISTIC CLASSIFICATION OF SERIAL MURDERS

From ancient times murder is believed to be the most grievous offense that violates generally recognized principles of society. Death Investigation is an art that is never mastered. As analysis of criminal case shows, there are a lot of mistakes that investigators admitted performing their duties in criminal prosecution. During the entire death investigation, from initial call to final courtroom testimony, the way things are done is as important as what is done.

Because that very kind of murder investigation is the most complicated in all stages, notion of «serial murders», classification of serial murders based on motive and methods would be discovered in the article as basic disposition. In spite of well-known researchers' decisions problems of notion of «serial murders» and classification of serial murders aren't examined in full-scale.

There is no common notion of «serial murders». We think that serial murders could be defined as cumulative murders (three and more) that were committed by certain person (body of men) in consecutive order and terms. These offenses are consolidated by motive, modus operandi.

Significance of serial murders' classification implicates in analysis of data array with following grouping under certain signs and proposition of practical advices. To our mind serial murders' classification can be in following way:

Sexual motivated serial murders. The main sense consists in satisfaction of pathological sexual necessity;

Hedonistic motivated serial murders. Murder is committed for murder as an act of killing human being;

Serial murders with self-affirmation and predominance motives.

Serial murders with vengeance and replacement motives.

Serial murders with missionary motives. The main sense consists in purification of society.

Also, serial murders can be classified depend on modus operandi. There are two groups:

Well-planed offences or murders committed by slayer- hunter. He (or she) always planes every act, perform a spadework;

Spontaneous murders. They are characterized by sudden spilling out of negative energy and sneak attack.

As a conclusion we'd like to notice that appointed classification can be foundation for methodology of serial murders' investigation.

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THE FORMS OF USING POLYGRAPH IN CRIMINAL INVESTIGATION OF UKRAINE

The majority of modern scholars are in favor of using polygraphs in criminal proceedings of Ukraine. However, there still remain uncompromising opponents of any possibility of such usage. The results of polygraph examination are rarely used in court. In majority cases they have only orientational meaning, head investigation into the right direction. In particular, polygraph is used for reducing number of people suspected in committing a crime, or establishing evidential value of the assembled evidences, finding locations of persons or things, identifying unrecognized bodies, detecting missing people, identifying place of residence of people, investigating undetected crimes of past years etc.

In following article author analyzes possible forms of using polygraph in criminal justice of Ukraine. The author comes to conclusion that the polygraph may be used as a support technical tool in operational-investigative activity and different investigative (search) actions, such as interrogation, presentation for identification, search, investigative experiment etc. But the most rational and effective form of polygraph testing is forensic examination. The author indicates that the polygraph can be used in various forensic examinations as a support technical tool (psychological and psychiatric examination), but mainly in form of independent – psychophysiological examination.

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THE ESTABLISHMENT OF PSYCHOLOGICAL CONTACT WITH THE CONDUCT OF INVESTIGATIVE (DETECTIVE) ACTIONS WITH FOREIGNERS

The issue of establishing psychological contact with the conduct of investigative (detective) actions with foreigners is particularly relevant for the study, since this category of persons conducting the investigation (investigation) of action is more complex. Indeed, except for some procedural legal characteristics of investigative (detective) actions with foreigners should also pay attention to some of the psychological and general organizational characteristics that influence the tactics of investigative (detec-

tive) actions with such people. Thus, among these features should be made to establish psychological contact. It is the psychological problems of establishing contact with the investigative (detective) actions with foreigners will be considered in the article.

It should be noted that the tactics that are based on the need to establish psychological contact and psychological impact, must meet the requirements of selectivity. Such tactics are based on the methods of communication, persuasion, suggestion, managed mental states, an example of reflection, emotional infection, etc. Depending on the purpose of establishing psychological contact and procedural provisions of the person with whom you need to install the psychological contact can be used by different system of tactics. Such techniques can be used either singly or in the form of tactical combinations. Note that such tactics should affect only those persons that how - or conceals certain truthful information relevant to the case and to be neutral (no influence) disinterested persons.

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EUROPEAN STANDARDS FOR THE PROVISION OF FREE LEGAL ASSISTANCE IN CRIMINAL PROCEEDINGS: IMPLEMENTATION CHALLENGES IN UKRAINE

The article investigates the problems of implementation in Ukraine of European standards for providing free legal aid in criminal proceedings. The right to free legal aid has long been fixed in the Constitution of Ukraine and some special laws of Ukraine. However, to implement it in its entirety was not possible due to lack of consistent policy on legal aid funded by the state. The European approach to the issue of legal aid remains unchanged and is real inalienability of the right to legal assistance of his right to effective access to justice.

The author highlights the major international principles of providing free legal aid. Special attention is paid to the process of attracting defense counsel to provide free legal assistance to detainees. Providing of free legal aid is an important professional responsibility of lawyer. Everyone has the right to be given the necessary legal aid of lawyer in criminal proceedings. Everyone is free to choose the qualified lawyer. At the same time the responsibility for funding of legal aid should be assigned to the state.

INTERNATIONAL LAW AND COMPARATIVE JURISPRUDENCE

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IMPROVING THE QUALITY OF COURTS

The influence of European and global initiatives to promote measures to improve the quality of justice at the courts resulted also in a number of activities in Ukraine to evaluate and improve the court quality and to enhance the public trust and confidence in the judiciary. An important role is played by the work of the USAID Ukraine Rule of Law project (2006-2011) and the USAID FAIR Justice project. FAIR Justice tries to support the development and implementation of key judicial reform legislation and improve judicial policies and procedures that promote a more effective, accountable and independent judiciary. By contributing to a new legislative and regulatory framework to the judiciary, strengthening the accountability and transparency, professionalism and effectiveness of the judiciary, as well as strengthening the role of civil society organizations in advocating and monitoring the work of the judiciary, the project will contribute to a long term change of the judiciary into a legal organization that can meet all relevant European and global standards on quality and effectiveness of the judiciary.

In the sphere of improving the quality and performance of the courts a standard court performance evaluation framework has been developed by FAIR Justice in cooperation with the Council of Judges of Ukraine and the State Judicial Administration. The development of this framework started already in 2010 when a Court Performance Evaluation working group was established (CPE working group) to create tools for internal court performance evaluation focusing on the timeliness of the proceedings and quality of court decisions. The testing of these instruments took initially place in six courts. In 2012 the number of participating pilot courts was extended to 13 courts under the guidance of the CPE working group in cooperation with the State Judicial Administration Working Group on Innovation.

The Court Performance Evaluation Framework (CPE Framework) is composed of four evaluation areas: efficiency of court administration, timeliness of court proceedings, quality of court decisions and court users' satisfaction with the court performance. For each of these areas several evaluation tools and criteria have been defined. There are a number of internal court performance evaluation instruments, such as a survey of judges and courts staff and an expert analysis of court decisions and timeliness of the proceedings. In addition to these internal evaluation instruments the CPE Framework contains also two external evaluation instruments, namely a court user satisfaction survey (Citizen Report Card) and an analysis of available court statistics.

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INTERNATIONAL LEGAL VIEWS OF R. LEMKIN CONCERNING THE QUALIFICATIONOF THE CERTAIN HISTORICAL FACTS OF THE MASSIVE HUMAN RIGHTS VIOLATIONS AS A CRIME OF «GENOCIDE»

The article is devoted to the international legal views of R. Lemkin concerning the qualification of the certain historical facts of the massive human rights violations as a crime of «genocide». Rafal Lemkin – is an international lawyer of the Jewish descent who was born in Russian Empire, worked and lived in Poland and became famous and died in the United States. His most outstanding contribution to the legal science is the term «genocide» which was coined by him and the international legal conception of this crime.

Besides his legal works, Lemkin studied the historical background of the genocide. He made a number of research devoted to the qualification of the different facts of the mass violence in the past as the crime of genocide. For example, Lemkin worked with the Spanish colonization policy in America in the XVI century; actions of German colonial administration in Africa in the beginning of XX century; Armenian genocide in 1915.

The analysis of international legal views of Lemkin concerning these historical events gives an opportunity to state that R. Lemkin had qualified all these facts as the crime genocide. The position of the scholar on these issues can be further used as a strong argument in discussions about the legal qualification of these tragic events.

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ILLICIT ENRICHMENT: INTERNATIONAL LEGAL ASPECT

The problem of fighting against the corruption is an actual question nowadays in all the countries of the world without exception. A great attention is attached to this problem from the side of international organizations. As a result of many years work it was the signing and ratification of Inter-American Convention Against Corruption, of African Union Convention on Preventing and Combating Corruption, of Council of Europe Criminal Law Convention on Corruption and of Convention

drawn up on the basis of Section K3 (2) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union. The experience gained in the frames of these Conventions was implemented in the UN Convention Against Corruption.

The problem of illicit enrichment of state officials takes the most significant place among the questions that are embraced by the international documents in the sphere of combating against the corruption.

The manifestation of total corruption among the countries of African continent caused those facts that African Union Convention on Preventing and Combating Corruption defines that illicit enrichment is not only the significant increase in the assets of a public official which he or she income or to any other person. Thus a priori, if a citizen has a property much bigger than his official incomes, not mattering his attachment towards his state official position, it would be defined as an act of corruption, would acquire certain investigation.

This question is quite actual for the countries of the world, but at the same time having different levers of influence at the legal, administrative and civil levels in the frames of the Council of Europe and of the European Union, the standard form as for keeping responsibility for illicit enrichment is absent. The majority of the European countries, and also the USA, unwillingly complete the criminalization of the illicit enrichment as a separate criminal act, like before. The declaring of incomes and outcomes of state officials and of the members of their families with the corresponding administrative and even criminal responsibility for giving false information is a form of realization of combating illicit enrichment in the countries of Europe and America.

Breaking the principles of criminal law-suiting and of the Constitutions of many countries of the world, as for presumption of innocence, for putting burden of evidence on the side of prosecuting and for the possibility not to witness against oneself, is a reason of not wishing to introduct the norms (as for illicit enrichment) into the national legislative systems.

The scientists' thoughts, concerning the expediency of limiting basic rights and freedoms for combating corruption, differ. Every side from both ones has its own short-comings and advantages, which being in its unity, create the whole picture of the institute of illicit enrichment and of the possibility of its introduction into the national legislative system.

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COOPERATION – SIDE'S OBLIGATION OF INTERNATIONAL PRIVATE CONTRACT

The performance of contracts often depends on the extent of good faith in cooperation between the contractual parties. The parties' obligation to cooperate has been regulated by international uniform acts. The need to respect this obligation derives from certain provisions of current Ukrainian legislation.

Draft Common Frame of Reference (DCFR) and the UNIDROIT Principles of International Commercial Contracts understand cooperation as one that «may reasonably be expected for the performance of the other party's obligations». Under the DCFR breach of obligation to cooperate attracts the various remedies prescribed for non-performance of a contractual obligation.

Cooperation includes the proper performance of parties' contractual obligations, any other actions necessary for contract performance, which may or may not be stipulated by the contract (obtaining permits, licenses, etc.), giving the other party the information necessary for contract performance, the information concerning the possible the risk of harm to persons or property by the performance of contract, giving the notice to the other party about the obstacles in contract performance and taking measures to reduce loss.

The contractual party suffered by the breach of the contract has to take measures to mitigate loss. In order to do this it has to take «reasonable steps». The compliance of steps with «reasonableness» criterion is evaluated in each case taking into account all relative circumstances. However, in general, it can be concluded that such steps may include entering into replacement transactions, taking measures to prevent destruction of the goods, the suspension of using a facility after finding its defects and others.

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THE HETMANATE'S INTERNATIONAL LEGAL STATUS AFTER THE DEATH OF HETMAN BOHDAN KHMELNYTSKYI: FROM MULTI-VASSAL STATEHOOD TO THE LOSS OF THE STATUS OF THE STATE FORMATION

The determination of the international legal status of Ukrainian Cossacks in the XVI-XVIII centuries is a rather controversial issue. Due to a number of contradictory trends related to military and political events of that historical period. First and foremost it concerns the Cossack rebellion in XVII century. However, it seems reasonable to emphasize that Cossacks as well as elites of the Polish-Lithuanian Commonwealth acted in conventional manner to settle bilateral suzerain-vassal relations and to determin the legal status of the Hetmanate.

The idea of the establishment of «Cossack-Ruthenia principality» was brought out at the end of the XVI century in theoretical works of S.Nalivaiko and J. Vereschynskyi. Bohdan Khmelnitsky largely implemented it during the 1648-1657 years through the development of the international legal status of the Hetmanate as multi-vassal (multi-dependent) state formation.

Since 1648, the roles of the Cossack state in the system of international relations and its international legal status have been defined by a number of agreements. According to these documents Hetmanate recognized itself either an autonomous entity or external vassal of an influential power (Polish-Lithuanian Commonwealth, Muscovy, the Osman Empire). However, it should be emphasized that the independent policy of the Cossack Army leaders and their extensive diplomatic maneuvering is an undeniable fact as well as the instability and impermanence of foreign policy objectives. It has made Zaporozhian Host independent if not de jure, then de facto at least.

The ideal Cossacks model of their legal status issue solution within the Polish-Lithuanian Commonwealth saturated with the ideas of the first half of the XVII century. It has initiated the development of the core principles of Muscovite protectorate over the Cossack state. These principles were consolidated in the Pereyaslavl Treaty in 1654. The text of the above mentioned Ukrainian-Muscovite agreement proclaimed an idea of king guaranteeing a set of class rights and prerogatives which the Cossacks demanded from the King of Poland for many decades. However, it seems necessary to stress on the nominal nature of the agreement. Firstly, it was not concluded in accordance with international legal customs of that time and, secondly, was not ratified by the General Council – the body of Zaporozhye Army, endowed with appropriate powers concerning international treaties.

Close enough to the ideas of multi-vassal system statehood in 1658-1659 approached successor of Khmelnitsky – Hetman Ivan

Vyhovskyi. He has concluded with the representatives of the Polish king an agreement to establish Cossack Ukraine within the Grand Duchy of Rus'. It was meant to be an autonomous public entity in a structure of Polish-Lithuanian-Ukrainian Commonwealth. It was a so-called «three nations union». As we know, the Hadyach agreement was never practically implemented. Legally Hetmanate never became an independent state in a contemporary understanding of a concept of national sovereignty.

Within a short period of time (beginning from 1676-mid. 1681) Yuri Khmelnitsky established a form of Cossack government state on the ruins of the once united Hetmanate with the help of prince Sultan. However, according to available sources, this principality was fully dependent on the latter. It coincided with the political objectives of the Cossack aimed at non-recognition of the protection of neither Polish nor Russian monarchs.

Yet a legal institution of Nominated Hetman (previously Hetmans were elected) who acted «in the name of His Royal Grace» existed in the last quarter of XVII - beginning of XVIII century on the Right-bank Ukraine. Nominated Hetmans Kunitskyi S., A. Mogyla, G. Grishko, S. Samus provided the protection from Turkish-Tatar aggression and displaced Ottoman troops from the territory of Ukraine and Moldova. Aggressors did not have a chance to establish themselves on the lands of the Kyiv region and Eastern Podillya. Having received in the mid 80's the royal permission for the development of the Right Bank Ukraine devastated after many years of war, Cossack officers carried out activities aimed to revive govern of Hetman in these areas.

Ukrainian statehood in the lands of the Left-bank Ukraine in the XVIII century was marked by the Cossacks withdrawal from the longtime orientation on the protectorate of Russian King Peter the Great. Eventually these events led to the destruction of the Zaporizhian Sich, complete loss of the state sovereignty signs and the gradual restriction of Ukrainian autonomy in the Russian Empire.

Multi-vassal system (simultaneous subordination to several neighboring monarchial rubals) is the main aspect of the international legal status of the Hetmanate within the frame of international relations in Central and Eastern, Southeastern and Northern Europe. The origins of this behavior of key international policy makers of Hetmanate are to be found in the practice of interstate relations in the European region at the turn of medieval and early modern times.

In general, Cossack rulers, due to the actions of stronger neighboring countries (Polish-Lithuanian Commonwealth, Moscow-Russian state, the Ottoman Empire, Swedish Kingdom) were forced to conduct appropriate policies to move from one side to another, to abandon one suzerain for another. Thus, the international legitimacy of an early modern Ukrainian state was provided. However, the recognition of dependency on several monarchs was considered to be the efficient measure not to be conquered by either of them.

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STATES MEMBERS REPORTING OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 1966 AS THE PART OF THE MONITORING MECHANISM OF THE UNITED NATIONS ORGANIZATION COMMITTEE OF HUMAN RIGHTS

At the present stage of development of international law, the issue of human rights is in the focus of the international community. In recent decades, there arose a system of control mechanisms by the performance of its obligations under international treaties on human rights.

Article is devoted to the role and place of the reporting by States Members according to the International Covenant on Civil and Political Rights in 1966 in the functioning of the monitoring mechanism of the UNO Human Rights Committee. Reporting is determined by the provisions of the Covenant. All of the State Parties have an obligation to submit a Report to the Committee on the periodical basis.

During all the period of its functioning the Committee has developed a complete system of the rules governing the procedure for reporting, their form and content, as well as legal consequences of their review for states. The procedure of the submitting is prescribed by the norms of the Committee and the Rules of Procedure. Also there exist a General guidelines for periodic reports which contain a more detailed information on the procedure of the Reporting. At the same time, it is necessary to emphasize that in the process of the submission and consideration of the reports there may occur some problems, but in general they are not systematic.

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INTERNATIONAL LEGAL REGULATION OF SUGAR TRADE IN THE PERIOD BETWEEN THE FIRST AND SECOND WORLD WARS

First international sugar agreements in their modern form appeared between the First and Second World Wars. During this period two multilateral instruments controlling the sugar trade were concluded, namely the 1931 International Sugar Agreement (ISA 1931) and Agreement concerning the Regulation of Production and Marketing of Sugar of 1937 (ISA 1937).

ISA 1931 originated from the unilateral attempts by Cuba to stabilize the world sugar market. It was signed between the producer's associations of Germany, Poland, Hungary, Belgium, Czechoslovakia, Cuba and Java. ISA 1931 set export quotas for its participants and attempted to liquidate the large surplus stocks by controlling the production of sugar. It established International Sugar Council to supervise the operation of the Agreement. ISA 1931 failed mainly due to the increase of sugar production outside the Agreement.

The ISA 1937 was aimed to correct the failures of ISA 1931 by devising more flexible quotas and involving governments as well as including consumer countries. It was signed by 21 nations and represented the first genuine global attempt to regulate the international sugar trade. Central to the ISA 1937 was the delimitation of what was called the «free market». An International Sugar Council was established to administer the Agreement. This time it received wider powers than under the ISA 1931. The early threat and the subsequent onset of the Second World War prevented the ISA 1937 from fully realizing its true potential. However, it became the model for the international sugar agreements which were concluded during the following fifty years.

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EUROPEAN SYSTEM FOR REDUCTION GREENHOUSE GASES EMISSIONS: LEGAL ASPECT

Evolution of the EuropeanUnion's (EU) environmental policy has shaped a precise approaches for environmental problems and contributed to the EU'semergence as a major player in international environmental policymaking. The EU is an active mem-

berofthe in ternational process to reduce greenhouse gase missions, acting responsibly with its obligations under international treaties. Apart from dynamic international activity in this area, the EU has created its own system, developed mechanisms and outlined goals for the effective reduction of greenhouse gases in the atmosphere. In the core of these EU activities lies the reduction of the greenhouse gases in the atmosphere. EU is using an established control system to constantly monitor immissions and emissions of the greenhouse gases. In order to achieve a gradual reduction in greenhouse gase missions the EU has introduced a system of trading quotas for such emissions, based on the standards of the market economy.

When following the activities on creating and implementing standards for environmental protection, especially those to help reduce greenhouse gase missions at the international and European levels one can suppose that international environmental law in the future will evolve to wards regionalization.

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CONCEPT «FAMILY LAW» IN COMPARATIVE LEGAL STUDIES: METHODOLOGICAL SIGNIFICANCE

Each national legal system has both common and distinctive features of the legal systems of other countries, because each country has historically influenced by traditions, culture, mentality and other factors, socio-economic and political nature developed its own legal system. Emphasizing the profound difference in the legal systems of contemporary comparative law at the same time allows for their comparison on certain fundamental criteria to identify common features. To refer to a group of legal systems with similar legal characteristics that give reason to speak of a relative unity systems, comparative law uses terminology specific «family of legal systems», «legal circles», «uniform legal system», «structural unity» . However, the most widespread in contemporary entered the term «legal family».

Legal family is the set of legal systems, united community the most important traits that indicate the substantial similarity of these systems is essential for comparative law.

The notion of «legal family» not only contributes to a general understanding of the law, but also helps in the study of individual legal systems. With the unification of legal systems in legal families comparativists can detect internal common principles and institutions of legal systems, see the general framework of legal systems, which lies at their outer diversity.

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EUROPEAN STANDARDS OF THE RIGHT TO MENTAL HEALTH: PROBLEM STATEMENT

The article represents the analysis of legal regulation of ensuring and protecting the right to mental health in terms of European Union law. Topicality of the development of the related legal framework is called forth by the growing need to observe right to mental health (especially, due to the increase of mental disorders' part in the global burden of health problems and significance of relevant economic load), and evolution of legislation on ensuring rights of vulnerable groups, and anti-discrimination law.

Right to mental health is considered with respect to its being an integral element of the right to health, protection of vulnerable categories' rights and anti-discrimination law.

Results of the research showed that in EU legislation the right to mental health is most often concerned with the right to health, despite topicality of ensuring particularly the right to mental health. However, strategic framework documents on basic directions of policies in the sphere of securing mental health are elaborated.

Researched European legislation tends to contain only an emphasis on vulnerability of migrants with regard to health issues. Nonetheless, these acts do not establish the direct link between «migration» and «mental health», whereas such a link is reflected in multitude of sociological and culture research. Lack of stress on the need to ensure mental health in European legislation is lack of European-wide migrant-friendly policies.

The level of development of EU indiscrimination legislation testifies to the fact that modern European standards focus more on the protection of the rights of persons with disabilities (including those, suffering from mental disorders), rather than on prevention work and ensuring access of vulnerable groups to relevant services. Modern issues in terms of anti-discrimination law concern lack of uniform understanding of the concept of disability and persons' getting the chance to protect their rights only after obtaining official proof of disability.

So, most topical tendencies of the development of policies in the sphere of mental health protection at the EU level are activization of prevention measures, promoting more accessible services, increased attention to vulnerable groups, and the development of research and information directions. Most important tasks of anti-discrimination law are elaborating on the uniform approach towards the concept of disability, and going away from medical model of disability towards social model.

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ABOUT NEW INTERNATIONAL STANDARDS IN THE FIELD OF SEAFARERS EMPLOYMENT

Ukraine is one of the world's largest suppliers of seafarers on ships under foreign flags and alteration of international standards of seafarers' work connected with the entry into force on the 20 August 2013 of the International Labour Organization Maritime Labour Convention 2006 will be essential for Ukrainian seafarers. The main aim of the above document is monitoring at every stage - from national systems of protection up to the international system and guaranty the right of seafarers for decent working conditions. Ukraine is already a member of the following three basic conventions governing the international shipping regime: the International Convention for the Safety of Life at Sea, 1974 (SOLAS), the International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978 (STCW) and the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL). Ukraine has all grounds for ratification of the ILO Maritime Labour Convention 2006. Hazards to our seafarers, are associated not only with the specifics of maritime transport, but also with a number of political, legal and social issues that require immediate solutions.

Obviously, the authors of the Convention - the representatives of seafarers, ship owners and governments who drawn up and adopted it within the framework of the International Labour Organization, created a new universal tool that is acceptable to all maritime parties, committed to the principles of decent work.

The Convention's entry into force will have consequences not only for the states that have ratified the Convention, but also for those states which have not ratified this international act. Such a legal mechanism was implemented on the ground of the practice of the International Maritime Organization (IMO) regulations, according to which the vessels of any State which has not ratified the MLC 2006 will not be granted more favorable treatment than to vessels flying the flag of a State which has ratified this Convention.

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THE INSTITUTE OF SANCTUARY IN THE CONTEMPORARY INTERNATIONAL LAW

Some elements of institute of the right of sanctuary arose up as early as ancient international law. The institute of proksenia in Ancient Greece was the one of the earliest prototypes of asylum. Substantial influence on development of the right of sanctuary was rendered by a canonical right of the Catholic Church. The institute of the right of sanctuary in the contemporary international law was formed in the nineteenth century.

A sovereign right of the state to give asylum for the foreigner which pursued by his own state or another state is the the main contents of institute of right of sanctuary presents.

There are two basic types of the asylum – the territorial asylum that foresees the grant the asylum by the state to the foreigner on its own territory, and the diplomatic asylum, that foresees a grant the asylum in the apartment of its embassy abroad. The possibility of granting of diplomatic asylum is denied by many states; however practice of international relations allows to admit the diplomatic asylum neither legal nor illegal.

The basic source of right of sanctuary is an international custom that is why there is a requirement in adopting of international convention on the right of sanctuary.

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Published twice a year

Edition 6-1 volume 1, 2013

Series was founded in 2010