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1
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DEVELOPMENT OF STATE AND LAW:
ISSUES OF THEORY AND CONSTITUTIONAL PRACTICE

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ON THE CREATION OF "SACHSENSPIEGEL" – THE CODE OF MEDIEVAL GERMAN LAW

From the mid 11th century to the emergence of "Sachsenspiegel" (literally "Saxon Mirror") in Germany widely developed material and spiritual life of feudal society, its basic institutions and ideas were created.

The purpose of the article is to examine origins of creation and formation of an important source of medieval German law – "Sachsenspiegel", to determine the impact of the mentioned law book on the development of other legal systems, including Ukrainian one.

Current studies show that "Sachsenspiegel" at the time of its writing was considered a kind of imperial law. Attempts to link its appearance with the Emperor Constantine and Charles contributed to further involvement of the norms of universal (scientific) law, legislators of which were either Emperor or the Pope. In this process of interpretation of "Sachsenspiegel" special role belonged to Magdeburg. In particular, in Magdeburg books of municipal law it was stated that "Sachsenspiegel" refers to imperial law. It was not only and not so much about simple designation of this book of laws to imperial law, but rather about the fact that some of its provisions and norms showed partial similarity and compliance with provisions of imperial (Roman) or church (canon) law. This position is also proved by direct presence of contemporary imperial law of the late Middle Ages in the "Sachsenspiegel". Deeply rooted in the literature question related to the history of the spread and impact of "Sachsenspiegel" and a decisive influence of Eike von Repgow on the process should be revised. It is clear that "Sachsenspiegel" together with Magdeburg municipal law were largely borrowed from Central and Eastern Europe. However, it is doubtful whether it would be possible to reach such a great success in spatial and temporal dimension without a significant achievement made by Johann von Buch writing "glosses", in which he scientifically and professionally combined universal (academic) and customary law. This success of "Sachsenspiegel" can not overshadow even his considerable reduction occurred in Elbe-Saale common law. In the future, it is necessary to consider the possibility to qualify "Sachsenspiegel" as a collection of "private" law.

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TOWARDS THE LAND CODE OF UKRAINIAN SSR OF 29.11.1922

In the early 20-ies of XX century, after the First World War and the Civil War, during the constant strife, economic decline and human poverty, newly established authorities began to solve key problems of state building and systematization of legislation. The article presents historical and legal analysis of the land laws that affected its first codification.

The first fundamental regulatory document in the field of rational use and protection of Ukrainian land of new formation after the October Revolution was "Decree on Land" of October 27, 1917. Although it was mostly of political and legal nature, it laid the foundations of the institution of rational use and protection of land.

Another act governing the use of land were Regulations "On the Activity of Volost Land Committees" of June 23, 1917, which detailed provisions of the Decree on Land in the field of grant of land and disposition of land only for certain volost with bodies elected by the people living there, and allocate the costs of setting up these committees to the state costs.

The following acts formed the basis of further land legislation: the Decree of the Council of People's Commissars of the Russian Soviet Federative Socialist Republic "On the Transition of Land to Disposition of Land Committees", adopted on November 5, 1917, Regulation of CPC of RSFSR "On Land Committees and their Duties in Settlement of Agricultural Relations" of December 4, 1917, which governed newly formed legislation.

The adoption of these acts proved the attention and concern about the condition of the land and its future to strengthen the state. These acts regulated the issues included into the Land Code of Ukraine with comprehensive settlement of all issues.

These regulations were the beginning of the Ukrainian Soviet codification embodying a systematic and comprehensive Code of Ukrainian Republic aimed at clear regulation of land use based on rational use and protection of lands.

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LEVELS OF LEGAL REGULATION OF NATIONAL LEGISLATIVE INITIATIVE: THEORETICAL AND LEGAL CORRELATION

In recent centuries in the world occurred significant positive changes in public and social life. Every year more and more states stand on the democratic path. Along with classic forms of direct democracy (elections, referendum) appear new, equally promising institutions of direct democracy, which provide direct participation of population in public affairs – this is the institution of the people's legislative initiative. This form of direct democracy is unknown for Ukrainian people, but, given international experience, it is very effective.

People's legislative initiative is widely known around the world and is regulated at different regulatory levels. In April 2012, this form of direct democracy was introduced at international (supranational) level in the European Union and consolidated in Art. 11 of the Treaty of Lisbon, thus enabling citizens to directly participate in the legislative life of the European Union. At the national level it is envisaged by the constitutions of such states as Kyrgyzstan, Italy, Spain, Brazil, Belarus and others. At the regional level (this level includes federal subjects, cantons, states, lands, national areas) people's legislative initiative is provided by the constitutions of 23 states of the United States of America, constitutions (statutes) of the subjects of the Russian Federation, lands of the Federal Republic of Germany, cantons of Switzerland, communities of Spain (Basque Country, Catalonia, etc.). Often, this right is assigned to the citizens at the municipal level as well (Statute of Yoshkar-Ola city, Russia, Constitution of the Federal Republic of Brazil)

Form of government is one of the most important characteristics of the state. It describes the state system and reflects the internal structure of the state, its territorial division, ratio of the state as a whole with the components and the degree of centralization and decentralization of state power. Analyzing the characteristics of a unitary state, such as the presence of single supreme bodies of state power; absence of separate territorial subdivisions with features of sovereignty; presence of a single state-wide legislation; single citizenship and sole representation of the entire country in international relations at the state level, it is possible to conclude that it is more appropriate and effective to regulate people's legislative initiative at the national level.

Thus, analyzing the levels of legal consolidation of people's legislative initiative, we note that this form of direct democracy exists and operates at all levels, starting with the highest supranational and ending at not less important municipal level.

That is why the prospects for further research in this matter are seen in the study in view of international experience in realization and use of this institution of direct democracy.

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CONSTITUTIONAL AND LEGAL STATUS OF FOREIGN UKRAINIANS: PRACTICAL REALIZATION

Ukraine has one of the largest diasporas in the world, which is why it is interested in the comprehensive development of relations with foreign Ukrainians, including their repatriation and reintegration into Ukrainian society. It is necessary to determine the constitutional and legal status of these individuals in the legislation of Ukraine. The first steps in this direction have already been taken: the Law of Ukraine "On the Legal Status of Foreign Ukrainians" adopted on March 4, 2004 and later adopted regulations aimed at creating a mechanism for its implementation, as well as appropriate changes to other laws.

Conditions for provision of the status of foreign Ukrainian under Article 3 of the Law of Ukraine "On Foreign Ukrainians" are:

1. Ukrainian self-identity;
2. Ukrainian ethnic origin;
3. written application on the desire to have the status of foreign Ukrainian;
4. age of 16 and more;
5. absence of Ukrainian citizenship.

Ukrainian ethnicity or origin of the applicant is confirmed by relevant documents or testimony of citizens of Ukraine, foreign Ukrainians or non-governmental organizations of foreign Ukrainians.

Regarding the relationship between the concepts "the legal status of foreign Ukrainian" and "constitutional and legal status of foreign Ukrainian" we believe that the latter is a subtype of first one. Along with the constitutional and legal status of foreign Ukrainian it is possible to talk about his/her administrative and legal status and so on. Constitutional and legal status of foreign Ukrainian does not coincide completely with constitutional and legal status of foreigners or stateless persons, because current legislation of Ukraine grants foreign Ukrainians additional rights, particularly to entry into Ukraine, immigration into it and more. In this case we are talking about constitutional and legal status of foreign Ukrainian as a special kind of constitutional and legal status of foreigners and stateless persons. National legislation, which defines the constitutional and legal status of foreign Ukrainian in Ukraine, requires improvement. The downside of Article 26 of the Constitution of Ukraine is the lack of provision for the right of foreigners and stateless persons to get the status of foreign Ukrainian on the terms and in the manner prescribed by law.

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LEGAL FRAMEWORK FOR ACTIVITY OF LEGAL CLINICS IN THE PROVISION OF LEGAL AID

Legal clinics as subjects of legal aid in Ukraine started their operation in early 1990s and now constitute an important segment of social support in the context of civil initiatives. However, social conditionality of such institutions created the need for legal regulation of their activities, determination of their legal forms and legal status in general. In this context, an important and relevant aspect of this problem is to study the regulation of legal clinics as an important subject of legal aid. From the point of view of legal science, study of this issue is caused by conceptualization of the problem of the main directions of providing free legal aid to the population of Ukraine and the directions of its improvement.

Thus, the legal framework for activity of legal clinics in the provision of legal aid in Ukraine based on the Constitution of Ukraine, the Law of Ukraine "On Legal Aid", Regulation of the Ministry of Science and Education of Ukraine "On Approval of Standard Regulation on Legal Clinic of Higher Educational Institution of Ukraine" and other legislative and regulatory legal acts. Given the existence of such legal provision, it is necessary to note imperfect level of determination of organizational and legal status of the entity providing free legal services. Given this, the prospect of further research we see in the need to provide legal clinics with organizational and legal status equal to that of non-governmental organizations. This status will expand the range of rights and obligations of legal clinics and improve their legal status. With the status of non-governmental organizations legal clinic will receive funding from universities, at the same time having the right to enter into agreements with other organizations within the charitable volunteer assistance, participating in larger projects on legal aid, attracting specialists of various qualifications, not limiting themselves to students of university and postgraduate students who are just beginning their practice. Thus, the obvious improvement of organizational and legal status of legal clinics in Ukraine is confirmed by promising line of research looking for the ways to enhance the efficiency of free legal services in general.

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CONTENTS OF PARLIAMENTARY IMMUNITY: COMPARATIVE ANALYSIS OF DOMESTIC AND FOREIGN EXPERIENCE

In 2014, Ukraine has begun making effective steps to improve legislation and reform the area of public authority. In particular, this year has been the key for changes in the Ukrainian parliament. Deputies are representatives of the people, called to represent and protect the interests of society. The state gives MPs immunity, thus emphasizing the importance of their work.

The study allowed identifying the following shortcomings within the legal regulation of parliamentary immunity:

a) inability of arrest or detention of deputy in the place of crime (there is no provided principle of immunity from jurisdiction in cases of flagrante delicto);

b) consideration of the procedure of detention or arrest of MP is too complicated and requires time expenditures (several days), which may contribute to the destruction of evidences, disappearance of witnesses and victims and escape of the criminal. Thus, it makes it impossible to investigate the crime so to say "following a hot scent";

c) immunity covers the entire period of parliamentary activities, including inter-session period which is not associated with the direct implementation of parliamentary activities;

d) immunity covers all criminal offenses prescribed by the Criminal Code of Ukraine, while we believe that positive experience of foreign countries provides parliamentary immunity only for certain categories of crimes.

In view of the above, we believe that Ukrainian legislation on the functioning and implementation of parliamentary immunity needs to be improved. Namely we consider it necessary:

– to legally regulate the possibility of arrest or detention of deputy in the place of crime;

– to minimize the time of consideration of the submission procedure and issuance of permit for detention or arrest of deputy;

– to provide immunity only for sessional period;

– to provide immunity for grave and especially grave crimes.

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FOREIGN EXPERIENCE IN LEGAL REGULATION OF PROFESSIONAL TRAINING OF JUDGES

Effective functioning of the judicial system as a guarantee of professional and impartial justice, adequate protection of the rights and freedoms and high quality of consideration of the case are interrelated with the level of knowledge and competence of judges hearing the case. The cause of wrongful decisions taken in violation of the law is unprofessionalism of judges, low level of knowledge, reluctance to train.

In order to avoid the adoption of arbitrary decisions by judges it is necessary to improve the procedure of professional training of judges, resolve conflicts and gaps in the legal regulations governing the implementation of training of judges.

The article analyzes the international experience in regulation of training of judges in countries such as Poland, Germany, France, UK, Spain, Portugal, Turkey and Georgia. Ukrainian legislator should pay attention to some aspects of foreign experience, such as the shortening of special training, introduction of joint training of judges and other professionals, such as prosecutors, the right to choose a program for training, regulation of peculiarities of training, introduction of simplified training for judicial candidates with experience.

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REFORMATION OF LEGISLATION PROVIDING LEGAL LIABILITY OF BODIES OF LOCAL SELF-GOVERNMENT

Participatory democracy as a basis for relations of authorities with the public in the system of local self-government is an integral part of representative democracy. This actualized the issues of adequate impact of local communities on local self-government officials and members of local councils, for the purpose of evaluating the effectiveness of resolution of local matters by these entities of public authority, their exercise of the functions of municipal government as well as observance of rules of conduct provided by law, restrictions and prohibitions, rules of public morality and so on.

Therefore, the responsibility of local authorities must be ensured through the establishment of a territorial community as an effective instance as a result of initiative, activity and exactingness of population demands and an aggregate of queries of people to the subjects of public power. The need for such reform involves the transformation of the psychology of individualism and dependency of members of territorial community into the ideology of social responsibility, partnerships of individuals and local self-governments.

One of the important mechanisms for the implementation of public control over local self-governments and form of activity to ensure responsibility of public authorities is the institution of public inspector and his assistants and the commissioner on territorial community's rights, who within the control of activities of local authorities monitor the degree of solution of local problems , the effectiveness of management decisions taken, the quality of services provided, the level oa satisfaction of the needs and interests of the local community.

Prospects for further research in this area are seen in the continuation of the study of existing forms of ensuring responsibility of local authorities in order to improve procedures of their implementation.

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SCIENTIFIC AND METHODOLOGICAL PRINCIPLES OF LEGAL RELATIONS IN HEALTH INSURANCE

Studying the formation of areas of medical insurance in Ukraine, it is necessary to focus on several aspects. Firstly, health insurance is a special system of relations, which is part of social legislation and acts as a guarantee of constitutional rights of citizens by the medical institutions. Secondly, health insurance has its own history of research developed during XIX – XX centuries.

It is worth noting that each process involves a scientific basis, and in this context works of scholars aimed to study the issue are of considerable interest. Besides clarification of substantive provisions of scientific works contributing to a detailed study of the investigated problem, it is necessary to determine the mandatory basic scientific methods helpful for investigation of its formation. This makes the study of the methodology of health insurance important as a basis for further phase-by-phase study of the specified area.

During the research of formation of health insurance it is mandatory to use general scientific and private scientific methods peculiar both in the study of social processes occurring in the territory of the state and clarification of individual terms of the legal relations in health insurance. Scientific techniques allowing studying the development of health insurance include systematic method, method of dialectics, historicism, method of analysis and synthesis, formal legal method, method of legal comparativism and so on. For a more detailed specification of the issue the author defined the term “methodology of medical insurance” and interpreted it as a set of scientific methods and approaches determining preconditions of formation, stages of development, and basis of functioning of health insurance. The issues of relationship of rules governing health insurance with branches of national law require further research.

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ESSENCE OF LABOR AS EMBODIMENT OF DIALECTICS OF A SINGLE, PARTICULAR AND UNIVERSAL

In the XX century under the influence of philosophical and economic theory of K. Marx views of scholars turned to the study of the question of the essence of labor. The greatest development of the issue is observed in the researches of sociologists, economists, psychologists and lawyers. Their developments stipulated the formation of the conceptual understanding of the organization and payment for labour and working conditions. The methodologies of improvement of employee's motivation to work have been developed. The question of employee morale turned out to be very relevant, and in the legal field such categories as "decent work" and "free labor" have been consolidated. It should be noted that, despite the preconditions for consistent, sustained and comprehensive deployment of work as human essence, this has not happened. The consumer society began to form new needs, which did not direct men towards the path of perfection, but injected them into a cycle of relations based on the feeling of existence as possessing a variety of dubious benefits. In this perspective, science and positivist philosophy justifying it considered work lately.

Development of labor as a way of reflecting the social form of the motion of matter is directly related to the development of man's knowledge of his essence. Labor is a way to deploy essential powers of man. Therefore, changing and developing forms of labor, man thus perceives himself, and perceiving his essence, he seeks to improve the way of its implementation.

Labor is the basis of the dialectical unity of a single, particular and universal. Quality development of work results in creation, development and evolution of generic essence of man, perfection of human consciousness, evolution of ideas about the ideal form of labor as a way of reflecting the world (Universe, Space), which allows realizing the true nature of man, understood as a free and creative work.

Principle inherent features of labor are freedom and creativity. Only in the beginning they exist as a possibility, but "congenial" labor makes them real. Not every form of labor can become congenial in its essence, but it does not mean that congeniality is not inherent to work ideally as an evolving phenomenon. Congenial labor is the way of the dialectical unity in the system "man – nature – Absolute (Universe, Space)".

CIVIL LAW, COMMERCIAL LAW AND COMMERCIAL PROCEDURE

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CAUSES OF REPRESENTATION OF CHILDREN'S INTEREST IN EXECUTION PROCEEDINGS BY PROSECUTOR

Representative activity of prosecutor is an important reason, according to which the prosecutor becomes participant of execution proceeding. However, despite the fact that the institution of representation by prosecutors in legal science and practice is not new, the issue of representation of interests of children by prosecutor in the execution proceedings are still poorly understood and systemized, causing problems that need further revision at the legislative level. Only on the basis of a comprehensive analysis of all aspects of representation by prosecutor its characteristic features in execution proceedings may be defined.

Thus, it is concluded that the representative activities of the prosecutor in the execution proceedings aimed at protecting the rights of children has certain characteristics: firstly, it is based directly on the regulation of the Constitution of Ukraine, while other types of representation are carried out on the basis of orders or other legislative acts; secondly, the difference of the representative activity of prosecutor is the fact that it is carried out by the body which always acts as the guarantor of the rights and freedoms of children in Ukraine.

Given the fact that the prosecutor is an independent member of the execution proceedings, his rights and obligations shall be specified in a separate article (Art. 12-1) of the Law Ukraine "On Execution Proceeding".

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ANALYSIS OF INTERPRETATION AND APPLICATION OF RESERVATION OF PUBLIC POLICY THROUGH THE PRISM OF JUDICIAL PRACTICE

Implementation of the option of autonomy of will and application of foreign law in the system of private international law is an important principle of the latter. However, it should be noted that it is important to ensure the protection of the domestic legal order from the negative effects of the application of foreign law. The instrument of such protection is reservation of public policy. Particular attention is paid to interpretation of the category of public policy in national and international judicial practice.

The construction of public policy has a special place in the system of conflict law because of its uncertainty in terms of practical application. At the level of theoretical research in foreign and domestic literature the use of reservation of public policy is associated with the exceptional cases where foreign principles regulating the relationship are clearly incompatible with the fundamental principles of the domestic legal order, which results or may result in destruction of the latter.

Theoretical approaches to understanding public order in the system of law of conflict of laws are quite stable. Meanwhile, as shown by the experience of foreign litigation, higher judicial authorities assume the burden of detailed interpretation and delineation of legal guidelines when identifying categories of public order. We believe that there is a need in provision by the Supreme Court of Ukraine of a separate explanation of the interpretation of public policy, or at least regulation revealing principles of application and identification of reservation of public policy by Ukrainian courts. Indeed, as illustrated above, the practice of reservation of public policy by the Supreme Court raises a number of questions.

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FEATURES OF REGISTRATION OF THE RIGHT TO INHERITANCE IN BODIES OF LOCAL SELF-GOVERNMENT: ISSUES OF IMPLEMENTATION OF LEGAL PROVISIONS

After the death the person usually leaves the heritage, which includes all the rights and duties that belonged to it as the testator at the time of opening of the inheritance and that have not stopped as a result of its death. It is well-known that the procedure (process) of registration of rights to inheritance in the notarial procedure is multistage and long-lasting. In addition, over the years the number of civil cases of inheritance increases. Therefore, the topic of inheritance (in the light of the use of material and procedural regulations), which since the establishment of our state, and till today is the issue of research of scholars, subjects of legislative initiative, students, lawyers, and citizens – subjects of hereditary relations.

Supporting the idea of improvement (simplification) of registration of inheritance rights in the notarial procedure, we believe that the legislation of Ukraine may follow the regulation of German law on notaries in the implementation of online system of arranging to visit a notary and electronic preparation of all the documents. In Germany, the individual visit to the notary occurs usually only when there are vexed issues or ones requiring additional explanation of subjects of notarial procedure. Usually notary receives, prepares and sends the necessary documents to citizens electronically for review. At the appointed time people come to notary only to sign them or approve their signature. That time spent in the notary's office is minimized. Thus, the advantage of the Notary Chamber of Ukraine in the future may be driving all notarial acts electronically; "equalization" of the action of electronic documents and paper ones; grant of the right to the notary to receive necessary documents from the public authorities and stakeholders electronically; electronic (online) procedure of arrangement to visit notary. It should be also noted that in order to provide confidential information about individuals who apply to the notary and who are the subjects of notarial procedures, in notary's offices there should necessarily be specialists closely monitoring the software and solving problems that arise in electronic communication.

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PRE-CONTRACTUAL LIABILITY OR "CULPA IN CONTRAHENDO" AS A PERSPECTIVE FOR UKRAINE

The importance of legal regulation of pre-contractual liability, so called "culpa in contrahendo", both in Austria and other European countries has long ceased to be a subject of scientific debate. However, there are still many questions when it comes to the implementation of this institution in the legislation of other states.

Today Ukrainian civil law does not contain clear legal regulation of the institute of pre-contractual liability, unlike most EU countries, which is why the topic is relevant and requires further research in the context of comparative legal analysis.

Unfortunately, Ukrainian civil law does not contain special rules of such content, but we can draw the same conclusion gathering all the general rules of the Civil Code of Ukraine into one. Therefore, I think it would be appropriate to formulate similar rule in the Civil Code. In particular, I propose to put it in Book 5 "The Right of Obligation", Section 2 "General Provisions on Agreement" Art. 627 "Freedom of Agreement", where item. 1 provides that pursuant to Article 6 of this Code, the parties shall be free to conclude an agreement, to select a counter agent and to determine the provisions of the agreement taking into consideration the requirements of this Code, other acts of civil legislation, customs of business turnover, requirements of rationality and justice. It seems logical to go further in this direction and to supplement this article with another part in order to more clearly delineate the boundaries of the principle of freedom of agreement in civil matters. In particular, it is proposed to formulate it as follows: "If one of the parties during the negotiations before the conclusion of the agreement, intentionally or due to gross negligence (not reporting about the circumstances that could and should have been foreseen and which hinder the conclusion of the agreement), by its actions or omissions misled the other party as to the validity of its intention to enter into the agreement, these actions should be considered violation of the principle of freedom of agreement, since such behavior is contrary to general principles of good faith, rationality and justice. The party in breach of the principle of freedom of agreement has to reimburse damage caused to the party relying on the fair conduct of its counterparty as a result of not signing the contract".

Thus, as we can see, the Constitution of Ukraine and the Civil Code of Ukraine contain a number of important basic rules which can form the basis for further development of the institute of pre-contractual liability in civil law of Ukraine. Therefore, we fully agree with the position of O.S. Komarov regarding his idea that the party negotiating in good faith, before the start of contractual relations deserves to legally protect its interests. In my opinion, the aforementioned general principle of good faith in civil matters, effective at the stage of negotiation, is the basis for the formulation in the civil law of Ukraine of new law that would bring us closer to those business standards that exist in Europe, where good faith is the core, which supports market economy of strong European states. Thus, the legal regulation of pre-contractual liabilities require further study and introduction of appropriate amendments to the current legislation of Ukraine, which is particularly important in the context of European integration processes that takes place in our country.

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INFORMATIONAL AND LEGAL ASPECTS OF MODERN ENVIRONMENTAL POLICY IN UKRAINE

One of the most pressing problems of modern social life of our country is to provide legal protection and environmental rights of man and the citizen. According to Art. 16 of the Constitution of Ukraine, environmental security and the maintenance of environmental balance in Ukraine, elimination of the results of Chornobyl disaster – the catastrophe of global scale, preserving the gene pool of the Ukrainian people is the responsibility of the state.

Summarizing the above, there are sufficient grounds to state that the issue of protection of environmental information rights of man and the citizen in modern social and political conditions of Ukraine is in the spotlight of both legal science and public authorities. Environmental policies, programs and strategic plans are attributes of the system of environmental management and strategic environmental planning as one of the main functions of the system of environmental management. In our opinion, the state environmental information policy should have a clear systematic approach and its components must be specific political, economic, legal and other measures for the effective management of the environmental situation in the interests of man and the citizen.

However, the number of legal acts in the field of environmental protection, and therefore, protection of environmental and civil rights confirms the plausibility of the idea of expediency and necessity of codification of environmental law in general and the protection of informational rights of individuals in particular.

Given the polarity of scientific views on the legal regulation of environmental relations, the problem of its implementation remains a pressing problem in the future encouraging scientific research and improving the mechanism of legal protection of environmental rights of man and the citizen. The basic document for the development and improvement of environmental laws, except the Constitution of Ukraine, should be the Basic Principles (Strategy) of State Environmental Policy of Ukraine till 2020, providing, inter alia, creation of the national informational system of environmental protection.

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THE CONCEPT OF CIVIL CONTRACT AS A WARRANTY OF PROTECTION OF PROPERTY RIGHTS OF THE PARTIES

Contract law is part of civil law. It regulates agreements that arise both between individuals and between entities on property relations. These relations are the foundation of private activities of all actors, and respectively the development of private law regulating business activity, and all civil circulation on property, work, capital and services in Ukraine.

We believe that civil contract should be understood as manifestation of the will of the parties, fixed in writing or orally in the form of agreements between two or more capable and able persons, the content of which is subject and conditions of the agreements aimed at emergence, modification or termination of civil contractual relations that therefore generate civil rights and obligations of the parties with possible notarial and registration certificate or without it.

Given the above, the concept of civil contract includes such components as:

a) mutual will of the parties and determination of their individualization in this regard;

b) writing form of consolidation of the will;

c) agreement of the parties as a manifestation of coordination;

d) mandatory legal capacity and competence of the parties;

e) presence of the subject and the essential terms of the contract;

f) presence of civil rights and obligations of contracting parties;

g) legal consequences in the form of emergence, modification or termination of civil contractual relations;

h) notarization and state registration of contracts (in certain cases provided by law)

On the basis of the study it can be concluded that the basis of security and protection of property rights of the parties to civil contract are the accuracy and specification of the contract, its subject matter, which cause actions of the parties, determining their rights and responsibilities and serving as the basis for emergence, modification or termination of civil contractual relations. In addition, an important feature of any contract that is essential for the security and protection of its parties, is the legitimacy of civil contract.

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FORMATION OF SANCTIONS OF DOMESTIC LABOR LAW: MIDDLE OF THE XIX CENTURY – BEGINNING OF THE XX CENTURY

Formation of domestic labor legislation is a long, complex and multi-level process. The formation of its preconditions began in the Middle Ages. Certain provisions concerning labor contracts with personally free individuals can be found in the "Russkaya Pravda", "Pskov Judicial Charter", "Sobornoye Ulozheniye" of 1649, the decrees of Peter I. It is noted that before the middle of the XIX century it was possible to talk only about the process of formation of the preconditions of labor laws. Historical and legal analysis of the formation of sanctions of labor law allows determining the characteristic tendencies of development of sanctions of labor law and identifying positive and negative historical experiences for further use.

By 1917, the system of sanctions in labor legislation of the Russian Empire was not well-structured, there was no clear distinction between disciplinary and pecuniary liability. Characteristic features of sanctions in labor legislation at the time: a) disciplinary penalties were of punitive nature with diminished role of the educational influence; b) the main features of sanctions for pecuniary liability were in the process of formation, including payment of property refunds from wages; c) question of pecuniary liability of the employer were regulated in detail; d) there took place a shift from absolute determination of the amount of refunds of the employer to its calculation, based on the earnings of a worker whose rights were violated; e) the period is characterized by manifested public and legal elements of legal regulation of labor relations.

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TERMINATION OF RIGHTS TO SHARE IN THE COMMON REAL ESTATE AT THE REQUEST OF OTHER CO-OWNERS

The emergence of the institution of joint ownership of the objects of civil relations is a natural result of development of the law, because the absence of such institution in terms of strengthening marriage, evolution of legal regulation of family relations and relations of joint activities of subjects of law would create significant legal obstacles to relevant subjects in exercising their authority regarding respective property and, in addition, would to some extent stimulate the emergence of disputes concerning property created or acquired simultaneously by several persons.

In modern conditions of the development of legal system of Ukraine, the institute of joint ownership gains particular importance. The gradual formation of our country's attractive investment image with the European vector of development has to lead to the expansion in the territory of Ukraine of the "space" for European business. One form of conducting business is such a common activity of several companies, which results in joint acquisition of the property, including real estate. In addition, the actual investment activity potentially provides the possibility of acquisition of the part of property – investee – by investors.

The above makes it possible to affirm the existence of the principle of division and separation of real estate, which establishes the correspondence of the value of share in the common real estate to the value of this object received by the persons concerned in the event of separation or division of property. If there is a discrepancy, the court at the request of the parties must conduct appropriate calculation and oblige the party that received the property at the price greater than the value of its share in the common property right to pay the others that acquired share in the property at lower price adequate compensation for the cost of share in common property.

In general, it is necessary to take into account the provisions of Article 365 of the civil Code of Ukraine operating evaluative categories, characterized by relativity, and therefore causing their complex use in the practice of law. Only court practices enable precision of appropriate grounds for termination of joint ownership of property and effective application of these legal provisions. At the same time we should agree that the most effective way to solve this issue is the proper regulation of corresponding social relations. Therefore, given the above, the improvement of national legislation on termination of the right to a share in the common property is rather relevant.

ADMINISTRATIVE LAW AND ADMINISTRATIVE PROCEDURE, INFORMATION LAW

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STATE JUDICIAL ADMINISTRATION OF UKRAINE AS A SUBJECT OF INNOVATION INTRODUCTION INTO JUDICIAL ADMINISTRATION IN UKRAINE

Striving for continuous improvement of the results of organization of public authority in Ukraine is determined by the improvement of activity its bodies, including the judiciary, the main task of which is to carry out the administration of justice, which, along with the function of constitutional review and judicial control, is one of the main functions of judiciary. However, a number of scholars offered to single out the auxiliary functions (which provide conditions for realization of basic functions) of the judiciary, including: 1) summarizing court practices; 2) selection, and training of staff; 3) internal control; 4) judicial administration. By the way, the analysis of the Law of Ukraine "On the Judicial System and Status of Judges" also shows a clear separation of powers between the bodies dividing them into those directly involved in the administration of justice, and those associated with the implementation of organizational functions, including the function of judicial administration.

Thus, we can conclude that the State Judicial Administration of Ukraine is the subject of indirect and direct innovation in judicial administration, which aims at achieving regulatory determined purpose – promotion of the effective administration of justice in the courts of Ukraine through the formation of organizational, informational and legal support of activities of judicial authorities within their authority established by law. However, SJA of Ukraine performs sufficiently effective arrangements, the results of which show a dynamic development of innovation introduction into judicial administration. At the same time there is an urgent need to study the role of local courts in implementing innovations in judicial administration. It is important to consider this issue in the next scientific publication.

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SOURCES OF DANGER TO THE REGIME OF PROPRIETARY INFORMATION IN LAW ENFORCEMENT ACTIVITY

Functioning of state institutions is impossible without a certain amount of proprietary information that ensures proper organization of their work. Proprietary information is intended to ensure the confidentiality of information created or received by employees in the performance of their duties from unlawful disclosure, use, alteration or destruction, the rights and legitimate interests of individuals and legal entities. Intensive information and technological development has led to the creation of opportunities for relatively easy and quick obtainment of any information.

As stated in the Concept of Technical Protection of Information in Ukraine, at the present stage of development of information technologies there is the possibility of leakage of information, violation of its integrity and blocking. In turn, the leaked information of state or other secret provided by law as well as proprietary information is one of the main potential threats to the national security of Ukraine in the information sector. Therefore, the legislator considers protection of proprietary information at the equal level with state and other kinds of secrets to be one of the main principles of technical protection of information.

The high latency of such offenses by workers of law enforcement agencies is explained: by unrecognition of the illegalness of disclosure of proprietary secrets – 15.0%, lach of definition of all the elements of the regime of official secrecy in law – 27.3% and understatement of such cases by officials of relevant body – 35.3%.

As for the responsibility of a small group of individuals who have been found guilty of divulging proprietary secrets in bodies of internal affairs of Ukraine, 44.1% of them had not been punished, 44.7% were brought to disciplinary liability, 5.6% borne administrative liability, 2.9% – borne criminal liability, and 2.6% compensated damages in civil proceedings. Thus, disclosure of proprietary secrets in law enforcement agencies in Ukraine under the current legislation and the real situation is unpunished in 44–45 out of 100 cases.

The regime of official secret in law enforcement agencies, as the regime of any secret, provides protection of confidential information that is official secret, through organizational, legal, engineering, cryptographic, operational and even psychological measures. The mechanism of administrative and legal support of official secret in bodies of internal affairs of Ukraine is essentially a set of administrative and legal measures aimed at achieving information security of law enforcement agencies of Ukraine. As evidenced by the provided information, this mechanism needs further improvement.

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LEGAL LIABILITY IN THE MECHANISM PROVIDING THE REGIME OF CLASSIFIED INFORMATION

The adoption of the Law of Ukraine "On Access to Public Information" in early 2011 is the result of concentration of democratic trends and activity of non-governmental organizations aimed at building open to the public authorities. The mentioned legal act is a modern legal instrument for implementing the principle of transparency and openness of government information. The Constitution of Ukraine in the Article 34 enshrines the right of everyone to freely collect, store, use and disseminate information by oral, written or other means of his or her choice, except circumstances specially defined in the law. This limitation is carried out by using the legal institution of classified information, which, in turn, is divided by the current legislation into confidential, secret and proprietary.

These types of information include both public and private secrets, because the current legislation, containing a definition of secrets, does not clearly indicate the nature of restricting access to information constituting them. Overall, the current Ukrainian legislation provides more than twenty kinds of secrets. Much of the regimes of secrets only experience their formation, because the terminology in the field of their application is not prudent enough. Besides, the latest developments in information law indicate the need to review the approach to this type of classified information as to secret.

Given the above, it is necessary to introduce additional tools to minimize the negative effects of violations of secrecy. Thus, in some cases of bringing to administrative liability it is necessary to consider the use of sanctions such as remunerative seizure of object, which became an instrument or direct object of committing an administrative offense; confiscation of an object, which became the instrument of commitment or direct object of administrative offense as well as money received as a result of an administrative offense; deprivation of special rights provided by this citizen as well as community service.

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OFFICIALS CODE OF ETHICS: NECESSITY OR TRADITION

Despite the changes taking place today in society and state, the level of corruption in Ukraine remains high, preventing implementation of the necessary reforms, economic development, establishment and normalization of functioning of civil society.

Multiple cases of inaction of officials as well as massive corruption encourage reviewing existing law and finding new ways to minimize corruption in the form of adoption of legal acts.

Thus, today an urgent requirement is lustration of public officials. According to social studies, more than 60% of Ukrainians positively treat the possibility of its realization.

Along with the mechanisms of lustration and adoption of a package of anti-corruption laws, it is also necessary to regulate the conduct of officials of different types by codes of ethics.

In science, there is a general notion of "codes of ethics" that are classified into types:

– social codes, rules of which in detail regulate the obligations to others (customers, electorate, employees, etc.);

– corporate codes, including the provisions regarding the values of the organization, its philosophy and goals;

– professional codes that define interpersonal relationships in the organization and coordination of the interests of persons.

Analysis of the rules of law, codes of different years makes it possible to say that at the beginning of the century fixed rules did not require special reviews as well as any ethics or morals. Their formalization, unfortunately, did not become an effective mechanism in preventing corruption, as there was no basis for the so-called anti-corruption education of young people.

Given the above, determination of a particular social type, characteristics of its social role, criminal, moral and psychological traits as well as socio-demographic characteristics, would be appropriate in shaping the rules of conduct, which would be actually observed. When discarding the listed, ethics would not become a significant factor in combating corruption.

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ADMINISTRATIVE CONTROL AND SUPERVISION AS ADMINISTRATIVE AND LEGAL GUARANTEES OF CITIZENS' RIGHTS TO PEACEFUL ASSEMBLY

An essential feature of the functioning of the rule of law is the regime of legitimacy, which contributes to securing public interest, protection of the rights and interests of citizens, legal persons and other subjects of public administration. Today, constitutional right to peaceful assembly requires special attention. It is unregulated at the legislative level, which causes gaps and violations in the mechanism of its implementation. As evidenced by the tragic events of Maidan, clashes during the dismantling of historical monuments and dustbins "filled" with people's deputies of different levels, legality is an important component of democratic transformations in any country, and its underestimation may complicate the crisis of society, as reflected in rising crime and dissemination of legal nihilism among all segments of the population. Thus, for the establishment and maintenance of proper regime of legitimacy in society it is necessary to ensure and guarantee special tools, among which administrative control and supervision deserve special attention.

Currently, local state administrations and courts exercise control over the the level of implementation of citizens' rights to peaceful assembly. Administrative and supervisory activities of the militia are manifested in verifications of citizens' (their associations') compliance with public order and safety in the procedure established by the legislation. In terms of reforming government, supervision the best describes the concept of administrative and legal guarantees of legality of conduct of peaceful assembly. However, there is a need to improve the legislation regarding the procedure of assembly, including the establishment of measures of administrative liability to violators of regulations among the officials of state agencies.

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SOURCES OF ADMINISTRATIVE LAW

Reform of domestic administrative law, which was marked by dramatic changes in its structure, ideology and targeting, actualizes the problem of systematization of the sources of this fundamental area. It is obvious that without a clear definition of the sources of administrative law it is impossible to build a holistic view of its scope, form and content, and build a holistic concept of industry development. The uncertainty in this area makes it difficult to solve a wide range of scientific and practical problems starting with the formation of the basic principles of administrative law science and ending with making decisions on specific legal cases.

In general, on the basis of the above, we can state the need for a balanced (to some extent even cautious) approach to the use of general provisions building the sector concept of sources of administrative law.

Based on the achievements of general legal theory, this concept should most accurately reflect patterns of functioning of administrative and legal sector and administrative relations.

Unfortunately, the format of the article does not allow representing in-depth analysis of all existing views on the nature of the content and sources of administrative law system, and providing a comprehensive description of this multifaceted phenomenon. In fact, this study has other objectives: to outline the problem of lack of a unified doctrinal concept of sources of administrative law, to determine the key differences in their understanding and on the basis of critical analysis of modern scientific approaches to form the theoretical basis for their further harmonization and consolidation. It is up to reader to judge the accomplishment of these objectives. The author believes that the research will give impetus to further discussions on the sources of administrative law.

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THE QUESTION OF PRINCIPLES OF ACTIVITY OF THE STATE EXECUTIVE SERVICE OF UKRAINE

The principles of law are the main ideas, assumptions, which are enshrined in law, have total value, higher mandatory nature and reflect the essential provisions of law. They are the main criterion for law-making and law-activities of government agencies, including the State Executive Service.

This is particularly important for civil servants who by the nature of their activity often appear to be in a situation where they need the principle of the rule of law to be applied to them.

This group of principles includes:

1) the principle of compulsory protection of property rights and interests of the plaintiff;

2) the principle of immediacy of compulsory enforcement of decisions of courts and other authorities with jurisdiction;

3) the principle of mediation of compulsory enforcement of decisions of courts and other authorities with jurisdiction;

4) the principle of sanctioned state coercion;

5) the principle of timely implementation of measures of compulsory enforcement;

6) the principle of correlation of the claims of plaintiff and measures of compulsory enforcement;

7) the principle of involvement of law enforcement and security agencies to compulsory enforcement;

8) the principle of interaction with labor groups, non-governmental organizations, government agencies and private firms in the enforcement of decisions of courts and other authorities with jurisdiction.

Thus, the stated principles are determining ones in the activity of state executor regarding compulsory enforcement of decisions of courts and other authorities with jurisdiction, including ones of material nature.

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INFORMATION RELATIONS IN THE FIELD OF ROAD TRAFFIC SAFETY: GENERAL LEGAL CHARACTERISTICS

Information relations in the field of road traffic safety in Ukraine were formed on the basis of the historical development of our country. For their proper operation in Ukraine it is necessary to define and enshrine in law the areas of government information policy in this area.

It is necessary to create conditions for the efficient and effective provision of necessary information in informational relations in the field of road safety at the legislative level. At the same time it is necessary to ensure conditions for the promotion and protection of all forms of information, information products, resources.

For proper functioning of information and legal relations in the field of road safety Ukraine should:

1) identify and enshrine areas of government information policy in this area;

2) provide legal regime of formation and use of information resources, collection, processing, accumulation, storage, retrieval, distribution and provision of information to consumers;

3) create the conditions for efficient and effective provision of necessary information in informational relations in the field of road traffic safety;

4) provide conditions for the promotion and protection of all forms of information, information products and resources, information technology in information relations.

Information relations in the field of road traffic safety can be roughly classified according to certain criteria. The most applicable criteria are considered to be subjective symptoms and objective features.

It should be noted that the classification of information relations in the field of road traffic safety can be carried out using different criteria (e.g., legitimate and illegitimate, legal and illegal, etc.).

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THE QUESTION OF PERSONAL DATA AS AN ELEMENT OF THE SYSTEM OF INFORMATION SUPPORT OF THE STATE EXECUTIVE SERVICE OF UKRAINE

The basic principle of operation of the legal system of Ukraine is the implementation of the decisions of public bodies that provide legal order in the state. Decree of the President of Ukraine of 09.12.2010 № 1085 "On Optimization of the System of Central Executive Bodies" formed such a central executive body as the State Executive Service of Ukraine.

Legal regulation of the use of personal data in the agencies of the State Executive Service is underdeveloped. In our opinion, regulations governing the activities of state executive agencies require the amendments, which would reflect the basic requirements of current legislation on personal data protection, oblige the employees of the State Executive Service to ensure the protection of personal data of creditors, debtors and all other participants in the enforcement proceedings. The provision regarding the Unified State Register of Enforcement Proceedings needs improvement of the procedures of protection of personal data of the participants of enforcement proceedings. Systemizing role in ensuring compliance with the legislation on the protection of personal data in the state executive service belongs to the development and enactment of the provision on processing of personal data in the system of the State Executive Service of Ukraine. This document should contain the list of information treated as personal data in information system of the executive service; the list of documents in which this information may be available; the list of officials providing protection of personal data; grounds and procedure for the transfer of this information to various departments and other elements of the mechanism ensuring protection of personal data.

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SUBJECT OF ADMINISTRATIVE OFFENSES IN ADVERTISING: GENESIS, ESSENCE, CLASSIFICATION

With the emergence of a market economy in Ukraine significantly increased the role of advertising and promotional activities that take up more and more space in everyone's life. Today, advertising is the leading source of information about a particular product and, therefore, can both benefit and harm legitimate rights and interests of consumers of goods and services. Ukraine, as well as any other state, need operating instruments of state regulation of advertising, the main levers which is a system of legislation on advertising, public control of advertising activities and statutory responsibility for violation of advertising legislation.

According to Art. 27 of the Law of Ukraine "On Advertising" persons guilty in violating the law on advertising bear disciplinary, civil liability. Administrative liability as a form of legal liability is application of administrative penalties, resulting in onerous consequences of property, moral, personal or other nature to persons who have committed administrative offenses by authorized bodies or officials on the grounds and in the manner established by administrative law.

Based on the above it can be concluded that the subject of administrative offenses in promotional activity is directly advertising as a part of the material world.

Today advertising, being the most important part of the infrastructure of the economy, is in the course of development both in quantitative and qualitative terms. Therefore, we consider it appropriate to explicate the term "advertising" in the current legislation, given the components of its classification.

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MANAGEMENT OF THE SYSTEM OF ENVIRONMENTAL MONITORING IN UKRAINE: LEGAL AND ORGANIZATIONAL MATTERS

The range of topics of research within environmental monitoring in recent years greatly expanded. It is represented by economic, technical, geographical and other relevant researches of the issues conducted by researchers in various scientific disciplines. However, it is the ability of the state and its authorized executive bodies to organize the implementation of environmental monitoring that largely determines the effectiveness of monitoring observations in the field of public relations.

Obviously, environmental monitoring as a special activity, independent function of public administration in the field of environment should have special organizational support. This refers to the creation of a structure the only purpose of which would be environmental monitoring in full, in all directions. This structure, which will operate at the national (in the state as a whole), regional (within administrative units, in economic and natural areas) and local levels (individual objects in the territory – businesses, cities, landscapes) may really be occupied with the issue of the development of the environmental monitoring, plan creation of its logistical and financial base.

Thus, attempts to improve the system of environmental monitoring through partial revisions of the system of bodies which are subject to monitoring, to clarify their duties and procedures of interaction do not give a positive result. It does not resolve the main problem of the weakness of environmental monitoring – its construction based on organizational mechanism unsuitable for monitoring environmental assessment. This mechanism must be modernized, radically updated based on the new system of monitoring observations carried out by specific environmental monitoring centers at national, regional and local levels.

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LEGAL REGULATION OF PROCEEDINGS IN CASES REGARDING THE RIGHT TO PEACEFUL ASSEMBLY

The right to peaceful assembly belongs to valuable basic human rights because it contributes to formation of public opinion – the foundation of any democracy and enables those, who have no direct access to decision-making, to be heard. Insufficient analysis of the regulatory framework for the regulation of the right to peaceful assembly, as well as references to invalid regulations in resolving cases by administrative courts especially actualizes the problem.

There are many developments that have considered this issue in conjunction with other political rights and freedoms of man and the citizen. The issue of protection of political rights and freedoms of man and the citizen in Ukraine (the right to peaceful assembly falls into this category) are the subject of scientific work of many Ukrainian scientists of our time.

Given the existing classification methods of legal regulation by type, the attention should be paid to the analysis of the current legislation, based on the procedure of authorization of peaceful assembly, when the participants had in administrative and legal sphere only those rights that are directly formulated in a specific regulation.

Given imperfection of the current state of legal regulation of the procedure of organization and holding of peaceful activities, which results in negative practice of law because law is formulated with insufficient precision and is ambiguously interpreted by the relevant legal entities (including local authorities and administrative courts), only legislative settlement of the procedure for organizing and conducting peaceful events can change negative practice.

FINANCE LAW

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FEATURES OF BRINGING TO FINANCIAL LIABILITY FOR BUDGET VIOLATIONS

Reforming the budget system of Ukraine, the necessity of expansion of the powers of local self-government in the budgeting process and the search for new sustainable mechanisms of formation and use of budget funds require effective means of control of budget and legal mechanism for prosecution of violators of the budget legislation. The importance of budgetary control actualized recently, when the political situation in Ukraine and threats to national security negatively affected the formation and execution of budgets of different levels, weakened the security of the state budget, causing the need to provide budget resources adequate to current needs and global trends.

I believe that the financial and legal sanctions for budget violations, according to the Budget Code of Ukraine should include the following: 1) the suspension of budgetary appropriations is suspension of taking budget commitment of the general fund of budget for specified time (Art. 15); 2) suspension of operations with public funds (Art. 120); 3) reduction of appropriations spending money on the amount of funds spent inappropriately (ch. 1, Art. 119); 4) mandatory return of funds received in the form of subsidies to the appropriate budget (p. 2, Art. 119). Other measures of influence for violation of budget legislation may be regarded as preventive measures of financial liability. Thus, financial liability in budgetary relations is characterized by specific features, which include the following: budget violations as an object of the financial liability, the range of subjects including participants of the budgeting process, financial sanctions for violation of budget legislation and preventive measures. Defining financial liability in the form of penalties for budget offenses in the current budget legislation will help to improve the budget process and mechanism to monitor compliance with budget legislation. Procedural peculiarities of application of financial liability for budget violations also require legislative definition.

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LEGAL REGULATION OF VALUE ADDED TAX IN THE CZECH REPUBLIC

Today European integration of Ukraine bothers almost every citizen of independent Ukraine, who cares about our country, who wants our country to become a powerful and prosperous. However, to create a dreamland it is necessary to radically adapt Ukrainian legislation with the laws of the European Union (hereinafter – EU).

The Czech Republic is a member of the European Union and its tax laws are very loyal to the taxpayers and well adapted to EU standards, which is why, in our view, Ukraine can learn from the experience of this country.

The article is devoted to the value added tax – the most important tax of the State Budget, which is one of the varieties of indirect taxes paid by the consumer to the budget at each stage of work, production of goods, services and included in the price of goods (works, services) and which acts as a part of the newly created price.

Thus, to sign up as payers of value added tax is possible both voluntary and mandatory. Unlike Ukraine, the Czech Republic applies only two kinds of rates of VAT: the basic one, which is 21% and the reduced rate of 15%. In Ukraine, the basic rate of VAT is 20%, and reduced – only 7%. The Czech Republic does not apply zero tax rate, however, in contrast to the Ukrainian legislation, the Czech Republic applies a reduced rate of VAT to a wider range of goods, works and services.

ISSUES OF CRIMINAL LAW, CRIMINOLOGY AND PENAL LAW

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DISADVANTAGES OF LEGISLATIVE TECHNIQUE (THROUGH EXAMPLE OF THE INSTITUTE COMPLICITY) AS AN OBSTACLE TO EFFICIENT CRIMINAL LAW: SOME PROBLEM ASPECTS

Criminalization as a process of identifying socially dangerous forms of individual behavior, recognition of acceptability, feasibility and possibility of criminal legal actions against them and their consolidation in law as criminal and penal is very closely related to issues of legislative technique. Legislative technique though is not involved in the development of the essence of criminal law, but is essential at the stage of its formulation, because it expresses the will of the legislator in the criminal law. In fact, the legislative technique can be determined as certain rules and requirements to formation of criminal law, failure to observe which significantly undermines the credibility of the criminal law as such.

It should be noted that recently the issues of disadvantages of legislative technique in the construction of criminal prohibitions gets unprecedented severity and urgency and is included in the subject of scientific research at different levels. The proof is the number of dissertation researches (including doctoral) directly related to this manner. Today there is an imbalance between the provisions of the General Part of the Criminal Code of Ukraine and regulations of the Special Part of the Criminal Code of Ukraine on understanding certain aspects of the institute of complicity. There are inconsistencies in construction of sanctions of criminal prohibitions for crimes committed in complicity.

Joint criminal activity includes different "charge" of public danger, not always adequately taken into account in the process of criminalization. Current Criminal Code of Ukraine demonstrates the one-sided regulation of forms of complicity, wrongly focusing on only one of them – the commission of a crime by a group of persons by prior agreement.

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AREAS OF IMPROVEMENT OF CRIMINAL LAW IN THE FIGHT AGAINST CORRUPTION

One of the important and pressing issues relevant for Ukrainian government and society as a whole is to prevent corruption. This is supported by numerous scientific studies, conferences, round tables and regular discussions of solutions to the problems of bribery at the state level.

Corruption like a virus parasitized in all areas of life: to give or receive a bribe in our country has become the norm. However, in a country standing on the path of European integration, it is generally unacceptable. The legislator tries to solve this problem, but sometimes this activity is reduced to populism and causes adverse effects.

Thus, at the end of the study, we concluded on the need:

1) to amend the Criminal Code of Ukraine, namely re-establish the institution of "bribery";

2) to amend the Part. 2, Art. 246 of the Criminal Procedure Code of Ukraine and to establish the possibility of covert investigative (detective) activities on official minor and moderate crimes, including p. 1, Art. 368 of the Criminal Code of Ukraine;

3) to decriminalize a proposal on illegal benefit.

The prospect for further study is continuous consideration and investigation of regulations of anti-corruption legislation of Ukraine and proposals for improving the existing anti-corruption legislation.

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STRUCTURAL AND ORGANIZATIONAL FEATURES OF TRANSNATIONAL CRIMINAL ORGANIZATIONS IN UKRAINE

Way of Ukraine to the European community, dynamic development of international cooperation between the European countries in all spheres of public life, including in the fight against crime, pose new challenges for domestic science. The Recommendations of the Committee of Ministers concerning the fight against crime, always state that on a long-term horizon fight against transnational organized crime is the main focus of international cooperation in criminal proceedings, the leading area of activity of law enforcement agencies, government officials and legislators, governments and non-governmental organizations around the world.

Thus, in Ukraine has developed its own structural and organizational type of transnational criminal organizations, which combines elements of classical criminal organizations and legitimate business as well as elements of criminal and legal control over criminal activities.

The study of features characterizing the subjects of transnational organized crime and the principles of avoidance of social control demonstrates that the way that the organization and activities of transnational criminal networks and their modification allows providing their high security and livelihoods.

In this regard, analysis of existing methods of structural organization of transnational criminal networks and basic principles of their work is extremely important and necessary. This allows determining the ways to protect transnational organized crime from social control, peculiarities of their internal security in the competition, methods of resolving emerging conflicts, the nature of restraining and protective functions regarding their members. Understanding the specifics of organization this way may allow outlining the strategy of restraining of the spread of activity of criminal organizations in the world geopolitical space.

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EVOLUTION OF COMMUNICATION LINKAGES OF CONDEMNED AS THE BASIS OF DEVELOPMENT OF MODERN PRISON SUBCULTURE

Preventing crime in prison is impossible without consolidation of efforts of law enforcement agencies, governmental agencies, local self-government and the public. We share the opinion of scholars-criminologists that crime prevention among prisoners is connected with coordination between administrative unsubordinated entities within their common goals and objectives. In addition, these entities interact on the basis of making joint decisions (making suggestions concerning crime counteraction, development of guidelines, etc.); autonomy of everyone within its legal powers and prevention of replacement of one agency with another in the performance of coordination activities; personal responsibility for timely implementation of agreed measures.

The main sources of replenishment of "obshchak" (common fund of a criminal community) in prison are:

1. From 5% to 20% of the winning weekly games "for the game sake" (cards, dominoes, backgammon);
2. Fee of convicted businessmen for personal safety at a rate that depends on the actual level of his wealth;
3. From 20% to 30% of the profits is acquired from the sale of goods "shyrpotreb", which is made out of control of the administration;
4. From 10% to 20% of the earnings of working prisoners ("muzhik") due to fraudulent employment of trusties;
5. From receipt (if required) of parcels from relatives or other persons, charities, civil and religious organizations.

Thus, the above examples and formulated problems again stress the need for a comprehensive study of the evolution of communication linkages of convicted as the basis of the modern prison subculture.

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INTERNATIONAL PRACTICE OF PROTECTION OF INSTITUTIONS FOR PRISONERS (THEORETICAL AND APPLIED ASPECTS)

Continuous attempts to develop modern penal doctrine of our country make it necessary to study international experience of the penal systems in different countries. Without a moderate understanding of the purpose and principles of their operation it is very difficult to choose a model that would meet the current conditions of Ukraine. This determines the relevance of the study of a wide range of issues and activities of penal institutions. Besides that, such an activity of any penal institution as protection of convicted deserves special attention.

In view of conducted analysis of protection of institutions for prisoners, it should be noted that the penitentiary system of the most developed countries is organized in such a way that its priority is strict isolation of the most dangerous criminals and high security of personnel of the institution. However, for systems of most European countries, the protection of prisoners is a minor task in comparison with ideas about the integration of criminals into society and return to their normal lifestyle. Extrapolating goals, objectives, organization of protection in foreign countries to Ukrainian conditions, first it is necessary to borrow logistical, communicative support of guard units as domestic penitentiary system is not ready to change its essence in treatment of prisoners and goals of criminal punishment.

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CRIMINAL LEGAL DESCRIPTION OF THE SUBJECT OF CRIME WITHIN VIOLATION OF ROAD TRAFFIC SAFETY OR RULES OF OPERATION OF TRANSPORT BY PERSONS THAT DRIVE IN UKRAINE

Composition of the crime "Violation of road traffic safety or rules of operation of vehicle by persons that drive" (Art. 286 of the Criminal Code of Ukraine), as well as any other offense under current criminal legislation of Ukraine is characterized by such a compulsory element as the perpetrator of the crime, the lack of which excludes the presence of the offense and therefore criminal liability for his commission.

The driver is a person who drives the vehicle and has a driver's license of the appropriate category. Driver is also the person who teaches driving being in the vehicle itself.

However, unlike the concept of "driver" the concept of "person who drives" is much wider. As opposed to the concept of "driver" that covers only the category of persons having a driver's license, the concept of "person who drives" covered all persons who drive a vehicle, regardless of whether they have the rights to do this or not.

Thus, the people driving a vehicle can be divided into two categories:

1) drivers (those entitled to drive vehicles);

2) persons driving the vehicle without a driver's license (the right to drive vehicles).

Thus, studies and analysis of the features of the subject of crime under Art. 286 of the Criminal Code of Ukraine, makes it possible to conclude that the subjects of violations of road traffic safety or rules of operation of vehicle by persons that drive, are sane physical persons who at the time of the offense have reached the age of sixteen and were driving a vehicle. However, given the fact that the passenger as a participant of road traffic, who has the responsibility to create safe conditions for road traffic, can roughly break them thus leading to serious consequences, we find it necessary, to determine the passenger as the subject of crime under Art. 286 of the Criminal Code of Ukraine together with the person that drives the vehicle.

CRIMINAL PROCEDURE LAW AND CRIMINOLOGY

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FEATURES OF QUESTIONING OF THE VICTIM DURING PRELIMINARY INVESTIGATION AND PROSECUTION OF CRIMINAL PROCEEDING

Preliminary investigation is a procedural activity of the competent authorities determined by Art. 38 of the Criminal Procedure Code of Ukraine (hereinafter – CPC of Ukraine), which aims at detection of criminal offenses and prosecution of persons who have committed them. During this activity the bodies of preliminary investigation conduct established in criminal procedural law investigative (detective) actions to clarify the circumstances to be proved in criminal proceedings.

Current conditions of fighting against crime require a high level of professionalism of investigator and skills in crime counteraction. He must have not only legal but also logical and psychological culture, strong character and will. The way to obtain information in course of investigation of crimes is questioning of witnesses and victims. This allows obtaining and verifying a large amount of information necessary to establish the truth in a criminal case. Important role in questioning plays knowledge of the logic, especially when formulating questions, identifying their sequence, in the course of analysis and evaluation of the information received. The effectiveness of questioning is largely determined by correct formulation of question. Thus, knowledge of the laws and rules of logic enables the investigation of criminal cases to provide their effectiveness and make the right decision. In this respect the significant role belongs to the problem of questions in the practice of the investigator. Strict compliance of investigator with current legislation, legality and justice during questioning ensures security of constitutional rights and freedoms of citizens of Ukraine.

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CORRELATION OF COVERT INVESTIGATIVE (DETECTIVE) ACTIONS AND PRINCIPLES OF CRIMINAL PROCEEDING

The new Criminal Procedure Code of Ukraine (hereinafter – CPC) contains many innovations, one of which is the appearance of previously unknown institute in criminal proceedings – institute of covert investigative (detective) actions the conduct of which is the duty of investigator. Legal regulation of the procedure of covert investigative (detective) actions conducted by investigator, their list and possibilities of directions of their realization, implementation of regulations of CPC in pretrial criminal investigation seem not quite successful and need scientific and legislative improvements. This article examines compliance of covert investigative (detective) actions with the main principles of the criminal proceedings legislatively enshrined in the CPC.

This question is actualized in terms of compliance of covert investigative (detective) actions with principles such as the principle of inviolability of home, non-interference in private life and the principle of confidentiality of communication.

CPC in part of conduct if covert investigative (detective) actions requires coordination with such generally recognized principles of criminal proceedings as the rule of law, inviolability of home, non-interference in private life, confidentiality of communication, directness of research of evidence, objects and documents, legal certainty and others. Procedural form of covert investigative (detective) actions, which will provide sufficient guarantees for the protection of human rights, requires detailed normative legal regulation.

Prospects for further research of problems are seen in the development of proposals to improve the legal regulation of the procedure of conduct and list of covert investigative (detective) actions.

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POWERS OF THE COURT OF FIRST INSTANCE AT THE STAGE OF JUDICIAL PROCEEDINGS AND THE RULE OF "ASYMMETRY" IN EVALUATION OF ADMISSIBILITY OF EVIDENCE IN CRIMINAL PROCEEDING

The author believes that, based on the certifying function of the institute of admissibility of evidence, the rules of "asymmetry" can not be applied to such violations of procedural form that objectively caused the doubts about the reliability of the information, if these doubts can not be excluded (denied), and the information received can not be proven by all possible legal means.

Firstly, the relevant breach should be the basis for the recognition of evidence to be inadmissible and unreliable by the court.

Secondly, the above causes the statement that the rules of "asymmetry" shall relate only to such requirements, criteria for the admissibility of evidence as compliance with legally established procedure regarding relevant proceedings (other than those of its components that provide certification of authenticity of evidence-based information) and observance of the constitutional and legal safeguards to protect the rights and freedoms in the course of these actions, if relevant violations of the law did not cause violations of these rights.

Thirdly, the author believes that an algorithm that should guide the court in making decisions on the admissibility of evidence shall be as follows. If the court, in assessing the incriminating evidence, determines its inadmissibility that can not be overcome in court, this evidence can not be the basis for a conviction, even if it contains information reliably establishing guilt of the person; guilt in this case must be evidences by other means of proof. As for the acquittal evidence, the latter takes precedence of reliability.

Consequently, the court assessing each evidence must clearly distinguish between rules regarding various properties of evidence (in this case the admissibility and reliability), and in any case should not mix (replace) these concepts, which can lead to negative consequences for the administration of justice.

The above once again underlines the relevance of that issue and the need for further research.

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TACTICAL FEATURES OF REVIEW OF DOCUMENTS DURING THE INVESTIGATION OF CRIMES IN THE AREA OF OFFICIAL ACTIVITY

Learning of tactical features of review of documents during the investigation of crimes in the area of official activity is an extremely necessary prerequisite to ensure the effectiveness of the criminal proceedings. Therefore, when choosing tactics of document review it is necessary to take into account the features of the mechanism of committing crimes in the area of official activity.

Committing crimes in the area of official activity, the offender may use his/her position, authority, forge documents and more. Therefore, the investigator sets the goal during the investigation of the outlined category of crimes to find the documents: a) containing traces of the crime; b) used as a means to commit criminal plan; c) containing indicative information; d) being the subject of offence.

In forensic science the concept and classification of documents used during the commission of crimes in economic management has been the subject of research of the group of authors of scientific work "Combating Economic Crime". Scholars have proposed a classification of documents containing evidentiary information based on the mechanism of committing economic crimes. Therefore, indicated approach is considered to be appropriate for the offenses in the area of official activity, including review of documents that have been used or contain other evidence of these crimes.

Learning of tactical features of review of documents during the investigation of crimes in the area of official activity is extremely necessary prerequisite to ensure the effectiveness of the criminal proceedings. Therefore, when choosing tactics of document review it is expedient to take into account the features of the mechanism of committing crimes in the area of official activity.

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LEGAL AND MEDICAL FEATURES OF CORPSE EXAMINATION

Theoretically, there are many options, methods and techniques of inspection of the crime-scene investigation. The choice of one or another of them depends on many factors. First of all, it depends on the nature and the size of area that should be examined, and then – the nature of the offense and other circumstances. We focus our attention on uncovering the basic provisions on inspection of the crime scene with the corpse. The choice of methodology of investigation is carried out during the general examination of the scene. At this stage, the investigator defines the boundaries of the scene and key objects. One of the key objects is the body. In the process of examining the scene it is advisable to carry out a survey and focusing shooting, record a video. In most cases, the best is to begin examination with the place of the corpse. In this order of investigation it is necessary to preserve traces from key point. It is reasonable move spiraling around the corpse. However, in spite of direction of movement, it is necessary to observe two stages of inspection of the crime scene: initially static examination of key points and areas or the entire scene is performed, and then – dynamic. The first stage eliminates movement of objects and their parts, the second – presupposes the movement of objects and their parts for the purpose of their better review.

Corpse examination is the main and often the only source of evidence about the crime and the person who committed it. During the crime-scene inspection, including corpse examination, it is possible to identify prospective areas of investigation. Therefore, in order not to lose important evidence, the examination should be conducted in compliance with the procedural legislation, guidelines and forensic tactics and with regard to specific inherent in these crimes. Crime-scene investigation as a whole and specifically should be conducted by investigator itself; other participants of the investigative action only help him/her. The order of examination of the corpse in place of its discovery as investigative action is governed primarily by Article 238 of the Criminal Procedure Code of Ukraine.

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CRIMINALISTIC PROVISION OF INVESTIGATIVE EXAMINATION (ORGANIZATIONAL ASPECTS)

Detection and investigation of crimes reasonably belongs to one of specific and complex types of law enforcement. In conditions of a high level of crime, especially the most socially dangerous forms of its manifestation, the goal of scholars, lawyers and law enforcement officials is to develop new technologies and use the latest scientific advances in the investigation in general and some investigative proceedings in particular. Notable role among investigative activities aimed at obtaining evidence-based information from the most impartial, incorruptible and true witnesses – so-called "silent witnesses" of crime (material sources of evidence-based information) – belongs to investigative examination. The value of investigative examination during the preliminary investigation can not be overemphasized. This investigative activity allows the investigator directly perceiving the scene and objects in order to detect traces of the crime and clarify the circumstances, which is important for the criminal case; to form the idea of the mechanism of crime and the personality of offender; to determine the causes and conditions that contributed to the commission of a crime; to promote investigative leads and correctly identify the areas of investigation. The timeliness and quality of investigative examination often determines the success of detection and investigation of crimes.

It is possible to accomplish the purpose of investigative examination only with its timely implementation, application of a variety of tactics and methods. To determine the sequence of the examination it is necessary to consider investigative situation and use the available information about the committed crime, identifying the most likely places to find traces of the crime and other evidences. Investigative examination can be considered positive if it achieved the ultimate goal of this investigative action: traces of the crime and information sufficient to set out leads are detected; information required for search and detention of criminals and stolen property is obtained; witnesses are determined etc.

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THE ROLE OF THE COURT IN THE PROCESS OF PROOF DURING CRIMINAL PROCEEDING

Before revealing the essence of the question at issue, in our opinion it is necessary to find out, firstly, what is the process of proof in criminal proceedings, and secondly, who is involved in the process and what their roles are.

These issues are not new in the theory of criminal proceeding. However, they are quite problematic and extremely important. In recent publications of scholars there is disagreement in relation to the role of the court in the process of proof and some of its powers.

Undoubtedly, the court is one of the main participants in the criminal process, because all criminal procedure aims to support the work of the court. However, the court is the only state agency that has the right to recognize a person guilty in a criminal offense. The fact that it is impossible to recognize a person guilty in any criminal offense beyond proving is virtually impossible raises the question whether the court in this case would act as prosecution, since the court's responsibility is to prove the guilt of a person. This absolutely different attitude to the role of the court in proving during the criminal proceedings is caused by the need in research and clear definition of the role of the court. Thus, the question at issue is undoubtedly relevant.

The research allows drawing conclusion that the court is subject to proof and at the same time plays an active role in proving through its powers to conduct during a hearing cognitive court actions involving parties to criminal proceedings. In our opinion, further areas of scientific research should be:

– clarification of the definition of "justice" regarding the current version of the Criminal Procedure Code of Ukraine;

– regulation of cognitive court actions and the role of the participants of trial in them.

CONTENTS

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1 • 2015

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