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

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LEGAL EDUCATION IN THE UNITED STATES

In the United States, historically, due to the large impact of European colonization of the continent, the legal system is based on the Anglo-American type (family). Meanwhile legal system is fairly wide collection of national legal systems within the same type of law, united by common historical formation, structure of sources, leading sectors and legal institutions, legal culture and thought and practice of application.

Anglo-American type of legal system of common law can be interpreted as a collection of national legal systems having common features, manifested in the unity of patterns and trends based on the standards set out by judges in case law, which dominates as a form (source) of law in the division of law into common law and equity, in recognition of law only after testing it in judicial practice, in prevalence of procedural law over the material.

Thus, American law schools, as well as the system of legal education went through gradual, slow and often reluctantly, but real expansion of outlook. Following the example of Harvard, modern law schools in the United States began with teaching exclusively private law to prepare graduates for private practice, but gradually expanded their programs to include public law to prepare for public service and practice in favor of the poor and social movements. These institutions began with teaching law as a separate independent area, but later expanded its scope by connecting legal studies with other disciplines. They have learned to complement the methodology of studying specific cases with practical work with real clients. After two centuries of isolation they become more open learning legal traditions and analyzing legal experiments in foreign countries.

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COOPERATION OF UKRAINE WITH THE UNITED NATIONS HUMAN RIGHTS COUNCIL

Cooperation in the field of human rights should probably be called the most active area of international relations. They occur both among international agencies and organizations, and between individual states. However, perhaps the most fruitful collaboration is the one that takes place between international organizations in the field of human rights and individual states. It allows learning through the experience accumulated at both levels, more accurately identifying problems and increasing the effectiveness of human rights, both at the micro and macro level.

M.M. Antonovych identifies six main ways of the implementation of the International Covenant on Civil and Political Rights (ICCPR) by Ukraine: 1) direct realization of the rights guaranteed by the ICCPR; 2) cancellation of articles of the Constitution and other laws that contradict the provisions of the ICCPR; 3) adoption of new legislation; 4) supplementation of applicable law with new rules implementing the ICCPR standards, or new revisions of articles; 5) improvement of judicial procedures for protecting human rights and freedoms and narrowing administrative powers in this area and so on.

In summary, we can say that Ukraine is actively involved in the activities of the UN Human Rights Council since the time of the Ukrainian SSR. During its cooperation with the Committee, our country has submitted eight periodic reports to that body. However, a disadvantage of all these reports is the lack of objectivity in the assessment of the current state of affairs of Ukraine's implementation of its obligations under the ICCPR. However, due to recent changes there is a possibility that in the future this situation will be corrected because there are problems with the implementation by Ukraine of actions contained in the decisions of the Council on Ukraine as the result of review of individual reports of abuse, which requires from our country of significant improvement of the existing legal framework in this area.

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FEATURES OF THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA

In conditions of globalization the domestic science and practice faces a number of problems associated with the need to study the characteristics of the legal systems of the leading countries and examine the possibility of their interaction with each other. The pursuance of the People's Republic of China of global leadership in the world and the prospects of political, economic and judicial cooperation with Ukraine necessitates theoretical study of all components of the legal system of China.

Modern judicial system of China functions under the Constitution of 1982 and the Law "On the Organization of People's Courts" of 1979 China's judicial system consists of: 1) local people's courts; 2) military and other courts of special jurisdiction (e.g. courts of rail transport); 3) the Supreme People's Court of China.

In summary, we can conclude that the legal system of China is unique because of modernization of current economic areas of law in accordance with the requirements of time and preserves centuries' traditions in the regulation of social relations and understanding of law. Study of positive law of China does not cause great difficulties because of the similarity of sources of law. However, the study of Chinese legal thinking offers great opportunities for borrowing in the construction of Ukrainian harmonious society.

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INFLUENCE OF GLOBALIZATION PROCESSES ON TRANSFORMATION OF RELIGIOUS LEGAL TRADITIONS IN THE LEGAL SYSTEM

The current stage of world development is characterized by deepening of the integration processes in all spheres of life of the world, the transformation of some socio-legal phenomena into the phenomena of systemic nature and global importance.

Thus, the mechanism of interaction between national legal systems is problematic in the course of globalization due to the uncertainty and inconsistency with the legal reality of religious and legal traditions in understanding abstract category "mechanism of convergence of national legal systems". The study of religious and legal traditions provides an opportunity to understand the real impact of law on the regulation of social relations, degree of its development at the level of positive law and in the form of appropriate models of legal behavior displayed in the minds of individuals and other subjects of public relations.

Current trends of update of the national legal system in areas of value orientation are characterized by attempts to use religious and legal traditions in the mechanism of social and normative regulation of social relations in order to create qualitatively new effect on the legal society, driven by international globalization processes. Religious legal traditions as a legal category reflect the uniqueness of the legal system of particular country. Recovery of legal impact of religious and legal traditions in the mechanism of social and normative regulation of social relations will improve the national legal system and increase the efficiency of its operation. In the process of globalization and integration of legal systems, religious and legal traditions, on the one hand, may impede the successful convergence of borrowing, implementation of legal developments of modern society, on the other – may promote legal acculturation and return to the study of the origins and use of the national legal system (national legal heritage) in the improvement of the legal system.

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FORMATION AND DEVELOPMENT OF THE INSTITUTE OF LEGAL MONITORING IN UKRAINE: PROBLEMS AND PROSPECTS

In general, in agreement with the idea of leading domestic theorists and practitioners who are sure that the specified type of monitoring participates in almost all functions of the legal system (integrative, regulatory, security, communication, legal incentives, etc.), we believe that the legal monitoring is essential for effective functioning of the legal system.

Thus, one way to develop effective legislation, improving its quality, ensure rapid response to the challenges, optimal and adequate legal regulation of social relations in Ukraine, which will allow moving to a new level of public and legal development, is legal monitoring. Given the extraordinary importance of this issue in our country, and with regard to the experience of other leading countries, we find it necessary to solve in the near future the following objectives: 1) to recognize the legal monitoring as a separate form of public authority; 2) to create a normative basis for such activities (e.g., by examining existing laws and/or adoption of a separate legal act in this area); 3) to identify the body responsible for legal monitoring, enshrine its relevant powers and responsibilities; 4) to determine the competence of other public bodies in the exercise of their monitoring activities; 5) to consolidate conditions and opportunities of legal non-profit organizations, institutions, civil society representatives, experts from international organizations to participate in monitoring.

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ANTHROPOLOGICAL APPROACH TO LAW AS THE BASIS OF LEGAL SCIENCE

The dramatic changes taking place in modern life, the reorientation of Ukrainian society towards human values determine rethinking of many phenomena of social life. These changes are clearly displayed in the legal field as well. Law as an important phenomenon of legal reality, affecting all spheres of human activity, determines the direction of public policy, reflects the legal status of a person, the extent of its involvement in the legal aspects of social life. Therefore, an understanding of the law, its role and importance not only as a regulator of social relations, but as an important and inherent part of human life, performing human-shaping function, promoting self-identity, creating real conditions for a person to be "legal person" determine the effectiveness of legal policy.

As a result of the practical application of anthropological approach, regulations receive anthropological interpretation based on humanistic principles. The paradigms of legal anthropology include: the paradigm of human as the center of law and of criterion of social regulation, the paradigm of legal development, the paradigm of structural functionality of the legal environment of man. Thus, these paradigms because of their specific content can and shall be used by jurisprudence as starting points of theoretical framework, which define qualitatively new legal areas of modern society, and the image of man will act as a universal basis for social order.

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CONCEPT AND TYPES OF DEFORMED LEGAL CONSCIOUSNESS: DEBATABLE QUESTIONS

Modern Ukrainian society is going through a difficult and controversial process of political, social and economic transformation, which leads, along with positive changes, to a number of "adverse" effects, one of which – and perhaps the most serious according to its consequences – is a negative change in the public consciousness, including legal one.

Describing deformed legal consciousness as its negative state, it is necessary first of all to find out what state of legal consciousness should be considered as positive one. Since the concept, the structure of legal consciousness, its types and forms are among the most studied problems of general theoretical law, it seems possible to determine the following features of legal consciousness based on a synthesis of the essential characteristics of legal consciousness defined by various scholars: legal consciousness is a form of social consciousness, the object of cognition and reflection of which is law and legal reality; legal consciousness includes ideas, theories, feelings, perceptions, values, expectations, attitudes formed in society, various social groups and individuals in the course of their inclusion in the legal life; legal consciousness determines the person's ability to exist in a legal space to fulfill legal requirements, enforce rights and freedoms and to be responsible; within the legal consciousness reflection, and cognition take place at the same time: on the one hand, the man cognizes itself, determines its own level of development, on the other – understands legal reality; legal consciousness is a self-reflection, reflection of the legal reality through the prism of individual interest, which is why justice acts as an element of motivation of actions of individuals, social groups in accordance with the requirements of law; legal consciousness is both the result and the process reflection and cognition of legal reality; legal consciousness serves as the basis for development of law and legal understanding.

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PRINCIPLES OF FUNDING FREE LEGAL ASSISTANCE IN UKRAINE

To sum up the content of the article it should be noted that the principles of funding free legal assistance are aimed at ensuring its efficient provision and operation of the legal phenomenon at all. The analysis of theoretically and practically accepted principles of funding, possibilities of their adaptation to the sphere of legal assistance allows creating a system of principles of funding free legal assistance, having both general and specific features. These principles include: 1) the principle of partial budget financing; 2) the combination of different sources of funding legal assistance (budget and public funding); 3) the principle of irreversibility and gratuitousness of funding process; 4) the principle of purpose (targeted) funding; 5) the principle of funding respectively to implementation of plans; 6) the principle of combining austerity in funding legal assistance with sufficient financial resources for its provision; 7) timely financing; 8) the principle of controllability of funding process; 9) transparency and openness of information about funding free legal assistance.

None of the principles has predominant character. Only systematic adherence to the basic principles of funding free legal assistance will lead to the proper implementation of guaranteed constitutional right of individuals to legal assistance.

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CAUSES, FORMS OF THEIR IMPLEMENTATION AND SANCTIONS OF CONSTITUTIONAL AND LEGAL LIABILITY OF REPRESENTATIVE BODIES AND OFFICIALS OF LOCAL SELF-GOVERNMENT

Implementation of responsibilities of local self-governments and their officials with relevant before local communities for the exercise of authority to solve local issues is provided by valid legislative acts in two ways: through the mechanism of the electoral process and by applying general rules of civil, administrative and criminal liability.

Officials of the local self-government for corruption offences may be brought to disciplinary, administrative and criminal liability, which results in the onset of constitutional and legal liability as well.

Thus, in our view, approval of the status of territorial community is an “extra” factor and a guarantee of recognition of territorial community. Charter has essential codification value. Legislation regulating the activities of local self-governments is sufficiently large and not always accessible for simple people. Therefore, the solution of this issue requires a lot of work.

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IDEOLOGICAL COMPONENT OF THE LEGAL SYSTEM IN CONDITIONS OF ITS MODERNIZATION

Among the directions of research of legal science of the XXI century, the problem of legal policy takes one of the leading places, which is quite reasonable, because it resolution leads to resolution of many other both theoretical and practical issues.

Globalization affects all subsystems and elements of the legal system, including legal policy and legal ideology, which play an important role in the functioning and development of the legal system. In the context of globalization, the legal policy of the state has an important task to determine those areas of activity of the state that would be socially appropriate, on the one hand, and on the other hand – would contain the effect of "anticipatory reflection", i.e. reflect the strategic priorities of the state.

The whole course of modernization of the Ukrainian state should be aimed at ensuring the rights and freedoms of man and the citizen, because they are recognized as the highest value at the constitutional level. A simple, passing criterion of the need to conduct legal policy in the field of modernization of the legal system is its focus on the rights and freedoms of citizens, whatever innovation sphere of social relations is concerned.

CIVIL LAW AND COMMERCIAL LAW

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FEATURES OF EXERCISE OF POWERS BY HOMEOWNER

Housing as property and non-property value is governed by many laws of Ukraine. First of all, the Constitution of Ukraine, which establishes the basic principles of human rights to housing, property right and guarantees of its protection as well as the Civil Code of Ukraine, which is a direct legislative act, revealing the basic principles of ownership, the concept of home, its types and rights of homeowner.

Practically important for judicial resolution of cases on issues regarding right to ownership are the relevant resolutions of the Supreme Court of Ukraine and the Supreme Court of Ukraine for Civil and Criminal Cases. The proposed changes are consistent with the planned reforms in the country to decentralize power and transfer certain powers to local authorities.

The future Housing Code of Ukraine should establish limitations in the exercise of powers by homeowners in relation to the house, which should comply with the interests of the owners, the third parties and society in general. Of course, entitling the homeowner with the right to exercise any actions regarding his/her property at his/her sole discretion does not preclude the restrictions of the rights. However, it is inconceivable to let owner be the one, who due to statutory limitations is unable to use the property at his/her sole discretion.

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PROBLEMS OF LEGAL REGULATION OF FORWARD AND FUTURES CONTRACTS AS TYPES OF EXCHANGE TRANSACTIONS

Exchange today is an example of an effective market daily meeting interests of producers, consumers, financiers, speculators, banks, companies and organizations. Through exchange trading, the participants aim to conclude an agreement that would ensure meeting the interests of their direct members, as well as customers, i.e. sellers and buyers. As you can see, the range of stakeholders in the conclusion of exchange transactions is broad, that is why the features of drawing exchange transactions, such as forwards and futures, need further clarification.

Thus, forward and futures agreements are among the most efficient and liquid trading mechanisms. However, today legal framework which is intended to regulate exchange transactions, including futures and forward, not only does not meet, but also in many areas inhibits the activity of the exchange market. Lack of understanding of futures trading by the representatives of legislative and executive branches, unstable economy, lack of conceptual and scientific developments constrain the effectiveness of their operation in the market. Therefore, it is necessary to develop a flexible legal framework regarding regulation of exchange activities in general and exchange transactions in particular, fixing clear concept of these agreements, and creating conditions for their use.

First of all, characteristics of types of exchange transactions requires legal consolidation, and, according to the authors, must be enshrined directly in the Commercial Code of Ukraine, Laws of Ukraine “On the Commodity Exchange”, “On Securities and Stock Market”, and guarantees for performance of these transactions.

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RETURN OF PROPERTY TO LESSOR: SOME ASPECTS OF LEGAL REGULATION

Contracting civil relationships, including the transfer of property for use, are not a static phenomenon and are characterized by a certain dynamics during its existence, one of the stages of which is performing the contractual relationship.

Given the fact that these legal relations are temporary, the process of proper implementation of this kind of contract is completed by return of property to lessor. At this stage of implementation, the main disputes arising between lessor and tenant are caused by the condition of the property the employer returns. Modern civil law determines proper performance of this duty by valuating category of "normal wear". At the same time, legal doctrine has not defined a clear and unambiguous meaning of this concept and offers to apply to existing regulations or technical standards.

Summing the results of the research, it should be noted that for the assessment of property that the tenant returns to its counterparty under a lease contract, the legislator uses the valuating category of "normal wear". This assessment is carried out separately in each case considering depreciation wear of item and proofs of application of the item according to its purpose and conditions determined by the parties to the contract. Return of property to lessor not in the same condition in which it was transferred to the tenant (with regard to normal wear) is not a ground for refusal of lessor to accept it. In order to eliminate controversy regarding the date and condition of the property, it is expedient to consolidate the fact of acceptance/return of property in an act of transfer or other document.

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ON LEGAL REGULATION OF LICENSING OF CERTAIN INDUSTRIAL AND ECONOMIC ACTIVITIES OF AGRICULTURAL PRODUCERS

Agricultural producers independently determine the directions of the economic activities, the structure of production and its volume, independently manage their production and revenues, carry out any activity not prohibited by law. However, the implementation of the economic activities by producers provides not only the independent practical implementation of their rights, but also performance of duties prescribed by law, including the restrictions in the implementation of the economic activities.

The results of the research allow concluding that the main criteria for attributing certain types of industrial and economic activities of agricultural producers to ones subjected to licensing is increased danger for the population and the environment, its strategic importance for the state and research intensity. That is why it is necessary to take into account the limitations provided by law.

Analysis of requirements of Ukrainian legislation on licensing in the industrial and economic activities of agricultural producers showed the need for improvement, particularly in terms of changes to the List of licensing authorities to adjust their names.

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CAPITAL CONSTRUCTION AS AN ECONOMIC AND LEGAL CATEGORY

Construction economic activity is characterized by increased sensitivity to negative economic effects. Even in conditions of growing volume of work performed, significant number of national construction companies remained unprofitable, which determines lack of available funds for the development of their own industrial base.

The study demonstrates the feasibility and fruitfulness of future research in the direction of description of the contents of forms of capital construction, ways to improve efficiency of its use for the country's defense and civil protection. Capital construction is economic and legal category that, despite being a part of the construction industry, has a relatively independent nature determined by its specifics, which should be taken into account by the legislator in providing such a method of indirect government support of construction as normative regulation. The criteria allowing to determine the capital building as a separate category, is the economic purpose of construction, respective subjects of relations (customer – an entity or authorities of state, local self-government entitled with economic competence, and the contractor – entrepreneur), complexity of organizational and technological forms, character of construction works and specific regulation, the nature and corresponding results of construction. Capital construction can be carried out both for individual objects and the territory. In the first case the main forms of capital construction are new construction, reconstruction, technical upgrading, repair of appropriate facilities, and in the second –housing development and reconstructive construction activity in the country, region, city or village.

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FEATURES OF QUALIFICATION OF CONTRACTUAL RELATIONS IN ACQUISITION OF COPIES OF COMPUTER SOFTWARE

Computer software is a relatively new subject of civil relations and because of its specific content it is not subject to full regulation by a single institution of civil law. Computer software is the result of human intellectual activity, but the medium on which it is recorded, is a property according to Art. 190 of the Civil Code of Ukraine. Today in Ukrainian legislation there is no clear rules of classification of the contractual relations in purchase and sale of copies of computer software recorded on CD, so-called "packaged" software. Therefore, the transactions of purchase and sale of packaged" software in practice often raises the question, which type of contract it is appropriate to conclude licensing contract or classic purchase and sale contract.

In summary, it should be noted that carrying out the transactions of purchase and sale of computer software it is impossible to use the provisions of only classic purchase and sale or licensing contract. The particular type of contract, which should be concluded, depends on the whether the buyer receives intellectual property rights on computer software and to what extent and in what way the transmission of computer software is carried out.

LABOR LAW AND SOCIAL SECURITY LAW

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APPLICATION OF FINANCIAL SANCTIONS FOR LATE PAYMENT OF A SINGLE FEE FOR OBLIGATORY STATE SOCIAL INSURANCE IN UKRAINE

Social policy plays a crucial role in shaping the interests of modern society and is an essential part of any country. Budget and the corresponding social policy are formed depending on the priorities of economic development. During the transformation processes in the economy the social insurance system changes as well.

Social security plays an important role in national economic development and creates conditions for economic security of citizens. However, today it is quite unstable and requires improvement. A major problem is the deficit of the Pension Fund of Ukraine, jeopardizing the proper pensions and social protection of disabled citizens.

In summary, we note that the draft Law of Ukraine "On the Reform of Obligatory State Social Insurance and Legalization of Wage Fund" № 5080 of September 16, 2014 is an important step in the reform of obligatory state social insurance and legalization of wage fund, particularly in terms of financial sanctions for late payment of a single fee for obligatory state social insurance in Ukraine.

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FORMATION AND TRENDS IN DEVELOPMENT OF SOCIAL SECURITY IN UKRAINE

Social Security passed a long way of development and formation. Of course, at the early stages the social insurance did not cover completely all social risks that existed at the time, but already replaced the principle of individual (civil) liability of employers for damage caused to the health of persons in the course of implementation of their work duties. An important step in the formation and development of social security was also introduction of compulsory social insurance. Today one of the priorities of social insurance is the introduction of voluntary social insurance, which is legally enshrined in the Concept of Social Security of Ukraine's Population since 1993.

The introduction of voluntary social insurance will contribute to the solution of a number of relevant issues, including the formation of additional financial support for persons experiencing social risk and in need of financial aid and reduce the financial burden on the state social insurance funds. Thus, before the introduction of voluntary health insurance it is necessary to adopt special legal act which would regulate such relationships, create and define the legal status of private social insurance funds as subjects of relations in voluntary social insurance and clearly define the limits of state participation in voluntary social insurance.

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MATERIAL LIABILITY OF EMPLOYER FOR DAMAGE CAUSED BY VIOLATION OF THE RIGHT TO WORK IN MODIFICATION AND TERMINATION OF LABOR CONTRACT ACCORDING TO THE DRAFT LABOR CODE OF UKRAINE

In our view, the employer's liability for damage caused by a violation of the right to work should not be provided by lots of items scattered in different chapters of draft Labor Code of Ukraine. It is necessary to provide only one article that will include an open list of violations of the right to work and provide equal responsibility for these violations. It is proposed to word this article as follows:

"Material liability of employer for damage caused by violation of the right to work.

The employer must reimburse the employee not received income in all cases of violation of the right to work. This obligation arises from the failure of the employer to provide the employee with work under labor contract; illicit transfer of the employee to another job; unlawful suspension from work; unlawful dismissal; triggered dismissal; delay in execution of decision on reinstatement and in other cases".

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ON SOME ISSUES OF DISCIPLINARY PROCEEDINGS AGAINST JUDGES IN THE REPUBLIC OF AZERBAIJAN

In connection with the judicial reform in the Republic of Azerbaijan the study of the powers and functions of the Judicial-Legal Council is a very important issue. It should be noted that the lack of decent developments of scientists in this area hinders the progress of research. However, for our scientific work it is a positive thing, because author of the article this way is not subjected to critical opinion and influence of theoretical scholar in the field of justice. Thus, one of the main issues relating to the powers of the Judicial-Legal Council is to implement disciplinary proceedings against judges, which will be the subject of this work.

The Article 9.3 of the Law of the Republic of Azerbaijan "On Judicial-Legal Council" notes that decisions on disciplinary proceedings are based on facts and cases that had significance, the nature, severity and the results of judicial offence, which once again implies the validity and legitimacy of these decisions.

Due to globalization processes of integration and the formation of new principles in the modern period, regardless of the place of residence the importance of human rights and determination of status of man in society grows.

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PERSPECTIVES OF IMPLEMENTATION OF THE CONVENTION OF ILO OF 2006 BY UKRAINE

Ukraine ranks fifth in the world in the number of seafarers employed at the international labor market. Tens of thousands of Ukrainian seamen, working particularly on ships under flags of convenience, received additional guarantees of proper working conditions at sea with the adoption of the Maritime Labour Convention (hereinafter – MLC) in 2006. Therefore important is the question of ratification of the Convention by Ukraine.

Thus, having considered the opinions of scholars, officials, attitudes and policies of the government of Ukraine (in particular, the Ministry of Infrastructure of Ukraine) on the ratification of MLC in 2006, we concluded that the document is really being studied and analyzed, but there is no clear understanding of it in the structure Ukrainian national legislation.

In the article we have identified relation to the ratification of MLC of 2006 of officials and public authorities separately because the first ones may speak, guided by subjective motives, and the position of public authorities tend to be based on objective factors (i.e., public authorities should always make decisions, assessing their implications for both the government and society as a whole, taking into account a variety of factors: economic, political, legal validity, etc.).

If we take into account the provisions of MLC of 2006 regarding social rights of seafarers, we see that Ukraine has a framework for their implementation. There is a number of existing national laws and regulations in the field of social protection which, although in need of updating, but could be the basis for preparation for ratification of MLC of 2006.

ADMINISTRATIVE LAW AND ADMINISTRATIVE PROCEDURE, INFORMATION LAW

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ADMINISTRATIVE AND LEGAL METHODS OF PUBLIC REGULATION OF MERGERS AND ACQUISITIONS OF FINANCIAL INSTITUTIONS

Modern market economy is characterized by an increase in the number of mergers and acquisitions (hereinafter – M & A) of financial institutions (hereinafter – FI), qualitative change in the structure of financial relations, based on the competitive mechanism.

The article, analyzing such administrative and legal measures used in public regulation as forced reorganization and compulsory liquidation of FI for violation of public requirements, taking into account quality content of legal restrictions, arising from the application of these administrative coercive measures, emphasizes that they essentially are measures of administrative responsibility and require enshrinement in the Code of Administrative Offences of Ukraine as an independent type of administrative penalties.

In addition, in order to unify and optimize the use of administrative and remedial measures of public regulation it is necessary to make amendments to the current administrative law regarding the inclusion into the content of misdemeanors of indications that these offenses can be committed not only through actions but also in the form of inaction.

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CLASSIFICATORY DISTRIBUTION OF CONTROL IN PUBLIC-PRIVATE PARTNERSHIP

According to the Concept of Reforming Public Administration in Ukraine, the principal novelty of administrative procedural law should be regulation of "interference proceedings" – cases where decisions that affect the rights and legitimate interests of particular individual(s) is carried out by the public administration on its own initiative. This strategic objective directly concerns the relationship between the subjects of public administration and entities in the public-private partnership (PPP) that occur at the stages of determination of the objects of PPP and candidate for private partner, providing state support, implementation and termination of agreement regarding public-private partnership.

Control in the field of public-private partnerships can be classified: a) by the orientation of the subject and object of control – outside or inside; b) by the time of implementation – previous, current or next; c) by the volume and nature of control powers of the subjects of public authority – general, departmental and supradepartmental (interdepartmental); d) by the entity involved – state, municipal and public.

All the control procedures in the field of public-private partnerships require legal regulation because their consolidation determines the successful implementation of PPP projects in Ukraine. Due attention should be paid to the development and mechanisms of social control.

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ANALYSIS OF THE ADMINISTRATIVE AGENCIES OF SUBJECTS OF URBAN TRANSPORT

Modern city needs constant adjustment of increase or decrease in the scope of transport services, improving reliability, continuity, security and quality of transportation of passengers and cargo. On the one hand, this requires improvement of transport infrastructure, on the other – improvement of the quality of public transport and subjects operating in the field of urban transport. For effective management of the subject in its structure there are established bodies with some competence. Depending on the type of ownership, organizational and legal form and activity carried out by subject in the field of public transport, there are different administrative bodies.

In summary, we note that administrative agencies of subjects in the field of public transport have both features common with other subjects and inherent only to subjects of the area. Common features are enshrines in the general legislative framework governing the establishment and competence of government entities, local self-governments and state agencies. Distinctive features are determined by the specificity of the subjects of public transport and the need to coordinate and control their activities by competent authorities. It is necessary to distinguish between administrative agencies of subjects in the field of urban transport and entities of transport management, acting as the management of the entire transport system and indirectly as subjects in the field of urban transport without interfering in their economic competence.

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STATE REGULATION OF HIGHER EDUCATION IN TERMS OF DEMOCRATIZATION OF PUBLIC RELATIONS IN UKRAINE

The current trend of democratization of public relations, which leads to the changing role of the state in the management of public affairs, as well as the specifics of the higher education, which outlines the appropriate regulatory limits of state intervention, participation of state and public organizations in administration make it possible to talk about the process of state regulation of higher education as a special form of governance, which is carried out without direct interference in the activities of legal relations in education and is a system of socio-economic, political, legal and organizational forms and methods of influence on educational subjects of relationships that create optimal conditions for efficient functioning of legal education and in order to achieve their goals. The main aspects of this process are:

– decentralization of higher education administration, redistribution of functions and powers between state government institutions, expansion of authorities of self-administration in higher education;

– intensification of cooperation between government and society, providing state-public nature of regulation and control in higher education;

– autonomy of higher education institutions;

– optimization of the network of higher education institutions, their conformation to the needs of the economy and demands of labor market;

– providing high quality of services, conformance with international standards;

– diversification of funding of higher education;

– creation of new public standards of higher education, coordination of qualification characteristics, standards and curriculum with educational and skill requirements of jobs;

– innovative development of higher education, new information, management and computer technology;

– strengthening of the integration of higher education, science, manufacturing, research and innovation components in structure of higher education;

– creation of systems for monitoring the effectiveness of management decisions and their impact on the quality of education;

– democratization of administrative procedures in the field of higher education, including: the procedure of appointing heads of universities, their certification, licensing procedures, certification and university accreditation, control and supervision procedures, etc.

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IMPLEMENTATION OF THE PRINCIPLE OF PUBLICITY AND OPENNESS AT CERTAIN STAGES OF ADMINISTRATIVE JUSTICE

Analyzing the implementation of the principle of publicity and transparency in administrative justice, most researchers have focused on the issues of judicial proceedings in open court sessions, fully implementing the provisions of Art. 12 of the Code of Administrative Procedure of Ukraine and carrying out relative control over the activities of the judiciary by civil society. However, the administrative procedure is a relationship arising in course of activity of administrative courts during the consideration and resolution of the administrative cases in the manner stipulated by the law. Thus, the previous review of the administrative case by the judge, holding of a closed meeting and written proceeding are not less important stages of the administrative proceedings in terms of publicity and transparency of justice.

Based on the above it can be concluded that during the trial and decision-making in administrative matters takes place the contrast, on the one hand, of the implementation of the principles of publicity and transparency, on the other – of protection of rights, freedoms, honor and dignity of citizens and impartiality and non-interference in the activity of judge during the administration of justice.

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LEGAL PRINCIPLES OF MANAGEMENT IN LAND RELATIONS IN UKRAINE

One of the major challenges modern Ukraine faces is to strengthen and improve the regulation of all aspects of society and the state. Effective legal regulation lays the basis for a reliable and competent work of various government agencies. This is directly related to the regulation of issues of management in land relations, ensuring the protection and preservation of the main national wealth and the most important natural resource.

In summary, we can state that the legal basis of management in the sphere of land relations in Ukraine consist of the Constitution of Ukraine, laws of Ukraine, regulations and departmental regulations. Land legislation, which plays an important role among legal regulations governing the management of land relations in Ukraine, it seems possible to divide it into general and special. Thus, the general laws are characterized by the fact that they cover a large set of social relations (including land issues). Such acts include the Law of Ukraine "On Environmental Protection", "On Oil and Gas", Forest and Water Codes of Ukraine and others. Special laws regulate particular issues in land relations. These must include the Law of Ukraine "On Waste", "On State Control over Use and Protection of Lands".

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THE BASIC STAGES OF FORMATION AND DEVELOPMENT OF PROCEDURES REGARDING CITIZENSHIP

Questions about the history of formation, stages of development and current state of citizenship are important for the science of constitutional law. Without their consideration, as without consideration of any other state and legal phenomenon, the study of citizenship can hardly be recognized deep and comprehensive.

Having examined the historical aspect of the institute of citizenship, procedure of its acquisition and termination, it is possible to identify the main stages of its formation: the procedure of acquisition and termination of citizenship in antiquity; procedure of acquiring citizenship in the Middle Ages; procedures regarding citizenship after bourgeois revolutions; transition of procedures regarding citizenship in the electronic field.

Regardless of the main stages of formation and development of the institution of citizenship, it should be noted that the procedure for granting citizenship has only two varieties: the issue of granting the citizenship was solved by community, and further right for granting the citizenship passed to the public authorities. Thus, over time due to certain historical events people acquired political rights and the right to be a citizen of the country. The formation of public institute of citizenship, procedural questions, acquisition and termination of citizenship, principles of its regulation are under the direct influence of the processes occurring in a particular state, because institution of citizenship can not but takes the characteristics and contradictions of appropriate stage of development of society and the state. Therefore, it can be noted that the development of the institute of citizenship is a permanent process.

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INTERNAL AUDIT OF STATE AVIATION SERVICE OF UKRAINE: INSTITUTIONAL AND LEGAL PROBLEMS AND WAYS OF THEIR SOLUTION

In terms of large-scale social changes in Ukraine, accompanied by revisions of the principles of state's participation in the regulation of various industries, the most important issue is rational distribution of national product in general and public finance management in particular. One of the essential parts of modern economics and social life is the transport system in which perspective and at the same time the one requiring substantial financial, in particular public? support, is a branch of civil aviation. Obviously, the flow of finance from state, domestic and foreign investors into the development of this industry should be preceded by creation of an effective system of monitoring and auditing.

The study made it possible to actualize the issue of imperfect internal audit in the State Aviation Administration of Ukraine and additionally pay attention of the relevant central authorities in civil aviation to personal responsibility for inefficient management of public resources, the establishment and operation of an adequate structure of internal audit and suggest ways to improve organizational and legal mechanism of functioning of such audit. Thus, the implementation of reasoned proposals submitted in the article that conform to the provisions of the Concept of Development of Public Internal Financial Control is one of the key conditions promoting financial discipline in the field of civil aviation.

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METHOD OF SCIENCE OF INFORMATION LAW

Science of information law is quite young, and therefore not investigated enough in its theoretical context. This causes the task to find out and learn its ontological and legal bases, one of which is the structure of science of information law.

Russian researcher O. Rychahova in the structure of any science identifies the following elements: 1) axiomatic assumptions, which are not proved, but serve as the basis for other scientific provisions; 2) initial concepts through which other concepts are defined, but they themselves are not defined; 3) thematic area of research; 4) methods for describing scientific field. In fact, the first two of these items have philosophical and ontological content and are not the subject of our research, although some definitional aspects of science of information law may be raised. The subject and methods of science of information law deserve special attention. In this article we the author focuses on the methods of science of information law.

The study showed that both methodology of information law and method of information law are complex phenomena. In this article we have tried to clarify the nature and system of a part of the method of information law – the method of science of information law. The system of methods of science of information law includes: general philosophical methods of cognition of phenomena of the world, general scientific methods, scientific and legal methods, specially-scientific methods. Most applicable methods in the science of information law are: historical method, structural method, classification and clustering, special legal method, comparative legal method, method of interpretation of information law. The next stage of research in this area should be the consideration and study of methods of information law as branch of law and as an academic discipline.

ISSUES OF CRIMINAL LAW, CRIMINOLOGY AND PENAL LAW

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INTERVENTION AS AN ESSENTIAL CHARACTERISTIC OF THE OBJECTIVE SIDE OF A CRIME UNDER ART. 376 OF THE CRIMINAL CODE OF UKRAINE

Based on the research we believe that all processes of interaction between the perpetrator and the victim can be combined in a single term – "impact" which in the psychology refers to purposeful movement and transfer of information from one party of interaction to another.

In the general meaningful sense, social impact is the process through which the behavior of one or more people changes the status of others. According to some criminologists, impact is a process of interaction between people, active behavior aimed at altering another person's behavior. The analysis of the concepts of "interference" and "impact" shows that it is more reasonable and appropriate to use the term is "impact" in the context of Art. 376 of the Criminal Code. This position, in our opinion, is determined by the interpretation of these terms in the dictionary of the Ukrainian language. To interfere means "to intervene or intrude into something; spontaneously meddle into the affairs of others, get involved in someone's relationship". The impact is "the effect or impression of one person or thing on another, pressure".

Furthermore, it should be noted that the intervention is carried out in the person's activity, and the impact is made towards the person (judge). It is possible to intervene in the activities of individuals without impact, but such an act is covered by other elements of crimes, including kidnapping, extortion of documents, stamps, seals, or their acquisition by fraud, malpractice or injury (Art. 357 of the Criminal Code) forgery of documents, seals, stamps and forms, sale or use of forged documents, stamps, seals (Art. 358 of the Criminal Code), illegal interference with operation of automated workflow systems of court (Art. 376-1 of the Criminal Code), non-compliance with court decisions (Art. 382 of the Criminal Code) and so on.

In view of the above we believe that the term "impact" is more accurate and covers a diverse range of situations that correspond to the content of the analyzed elements of the crime, especially, given the fact that the intervention can be carried out into operation (action) of mechanisms, by forces of nature, etc., and to intervene in the activities of the judiciary is possible only by influencing a judge (juror). By the way, this approach to understanding the "interference" is shared by the legislator, revealing responsibility for interference in activities of certain categories of persons through describing the act as "impact in any form" (p. 1, Art. 343, p. 1, Art. 344 of the Criminal Code).

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CRIMINAL CONSEQUENCES OF PERSON'S RELEASE FROM CRIMINAL LIABILITY IN CONNECTION WITH EFFECTIVE REPENTANCE

The criminal law of all developed countries contains tools aimed at implementing the principle of economy of coercive measures in relation to less serious crimes. The content of such measures is quite diverse, but they are an important part of release from criminal liability in connection with effective repentance and criminal consequences of this release.

Criminal consequences of release from criminal liability in connection with effective repentance have their own specifics, determined by characteristics of the institute of release from criminal liability. On this basis, such incentive provision (Art. 45 of the Criminal Code) shall not be applied to persons who have previously been released from criminal liability for such reason, if these people get back on the criminal path. They should not rely on the fact that the state once again treats them with humanity in the form of release from criminal liability.

However, as we have previously noted, this should raise the question of the period during which the denial of release from criminal liability of persons, in respect of whom the decision has already been taken, is possible. It seems that this period can be enshrined like period of limitation for the institution of criminal proceedings provided by items1, 2, 3 of p. 1, Art. 49 of the Criminal Code of Ukraine.

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CRIMINAL CONSEQUENCES OF COMMITTING UNLAWFUL ACTS BY JUVENILES UNDER THE CRIMINAL LAW OF FRG

Study and analysis of German criminal law in matters of criminal influence on the wrongful acts of minors are determined by several factors. They are primarily the proximity of legal systems, legal principles of regulation, traditions of building criminal legislation of Ukraine and FRG. The fact that Germany has been very successful in dealing with juvenile delinquency is also crucially important.

Having reviewed some of the issues of youth criminal law of Germany, it should be noted that the Law "On Courts for Youth" of 1953 p. (JGG), in the version of 1974, the majority of rules is devoted to criminal offenses committed by persons under the age of 21. Criminal penalties usually are not applied for such offenses. This is determined by the fact that primary goal of juvenile justice in Germany is not vengeance and punishment but prevention of new crimes by young people. In the scientific literature it is noted that the use of any kind of sanctions the paramount importance is the question of educational influence on young offenders.

Youth criminal law of Germany introduces some measures to prevent the commission of offenses, educational measures for juveniles that contribute to the formation of a certain category of persons as respectable citizens. The Law introduced the concept of education, which is formulated in § 2 JGG and that permeates almost all rules of youth criminal law of Germany. The leading principle of the criminal law of Germany establishes primarily educational nature of penalties and other consequences of a criminal offense used to prevent further negative development of juvenile. The use of different types of punishment in respect of a minor shall be made only with regard to all the circumstances of the case, as well as the person of offender, to ensure the greatest likelihood of rehabilitation. Thus, the choice of specific measures of influence on minors is always focused on specific goals of prevention, such as relapse prevention, and plays a supporting role in the further education and socialization of the young man.

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PORTRAIT IN THE METHODOLOGY OF CRIMINOLOGICAL RESEARCH OF PERSONALITY OF STUDENTS OF HIGHER EDUCATIONAL INSTITUTION WHO COMMITS A VIOLENT CRIME AGAINST LIFE AND HEALTH OF INDIVIDUAL

Methodology is a set of regulations and requirements of the theory of cognition, certain philosophical and dialectical laws and categories and logical principles, methods that science uses for description, study and analysis of various aspects of objective reality, as well as for discovering new ideas about them. Research is always an attempt to obtain new knowledge about the object of study, but in this case – about the personality of university student who commits a violent crime against human life and health. However, this attempt can be successful only given effective use of scientific methods.

Criminological studies use as many different scientific methods of research (hypothesis, system and structural analysis, historical comparisons, dynamic and statistical methods, etc.) and empirical sociological (study of documents, interviews, observation, experiment, etc.).

Criminological portrait promotes the development of scientific knowledge about the phenomenon of personality of offender. In contrast to the structurization, the result of criminological portraying is information model of university student who commits a violent crime against human life and health, which is not seen in static and dynamic state. This approach gives new properties to this system – the ability of self-regulation through informative exchange at macro- and meta-environment and thus justifies the feasibility of preventive work with university students towards preventing violent crimes against life and health.

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MEDIATION AS A TYPE OF CONDITIONAL RELEASE OF MINOR FROM SENTENCE AND SERVING IT

One of the most promising areas of modern criminal law reform is expansion of the scope of application of the procedure of reconciliation in criminal law contributing to a compromise between minors who committed the crime and the victim and help eliminate the negative effects of crime.

Summarizing the above, I consider the increase in the number of cases treated with the procedure of reconciliation of the parties (with the juvenile offender) to be appropriate. In particular, the cases under Articles: p. 1, Art. 185 (theft); p. 1 Art. 186 (robbery); p. 1, Art. 190 (fraud); p. 1, Art. 194 (intentional destruction of or damage to property); p. 1, Art. 296 (hooliganism) can be considered with the same procedures.

Implementation of this proposal in practice enables using the procedure of reconciliation at an early stage of criminal proceedings, not passing the case for consideration by public authorities, saving material resources and preventing new crimes. Institute of reconciliation may be a reflection of the normative idea of compromise in the concept of modern fight against crime in Ukraine.

It should be noted that the implementation of the results of reconciliation will change the way the state responds to the crimes committed by minors, provide an opportunity to restore the rights and interests of victims and reintegrate juvenile offender into society. It will have a positive impact on the existing judicial system substantially unloading it and contributing to creation of a positive image of Ukraine in the world.

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GENESIS OA INTERNATIONAL LAW ON PROTECTION OF CULTURAL HERITAGE

Protection of cultural heritage is a global problem the solution of which is carried out by means of legal, organizational and administrative measures envisaged by international conventions and other laws.

The object of cultural heritage is a characteristic property of cultural heritage that is its historical and cultural value, which determines the recognition of the object as heritage. All this determines relevance of the development and implementation of international law.

The effectiveness of the international legal system for the protection of cultural heritage depends primarily on such circumstances as strengthening of peaceful coexistence of states, reduction of the number of armed conflicts, use of only peaceful means to resolve them and most importantly – the undoubted implementation of regulations of international law and national legislation on protection of cultural heritage by states and citizens.

The existing international instruments for the protection of cultural heritage undoubtedly have great potential, especially when developing a system of preventive measures to protect objects of cultural heritage.

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CRIMINOLOGICAL CHARACTERISTICS OF CRIMES AGAINST FREEDOM, HONOR AND DIGNITY

In statutory instruments and political documents recently increasingly common becomes assertion that man is the highest social value in our society.

Personal (individual) human freedom is its essential and inalienable right. Article 9 of the International Covenant on Civil and Political Rights of 1966 and Article 3 of the Universal Declaration of Human Rights of 1948 state that everyone has the right to liberty and security of person. The provisions of these international instruments also provide that no one shall be held in slavery or servitude, subjected to unlawful arrest detention and exile.

Thus, our analysis of criminological crimes against freedom, honor and dignity for 6 months of 2014 compared to the same period of 2013 allow drawing some general conclusions.

Firstly, we observe the trend of significant increase of crime in this area.

Secondly, in the structure of crime dominate socially dangerous acts as hostage-taking (Art. 147 of the Criminal Code of Ukraine), unlawful imprisonment or kidnapping (Art. 146 of the Criminal Code of Ukraine), trafficking of human beings or other illegal agreement on human rights (Art. 149 of the Criminal Code of Ukraine), the use of a minor child for begging (Art. 150-1 of the Criminal Code of Ukraine).

Thirdly, the growth of this category of crimes took place in Kharkiv, Luhansk, Donetsk, and Kyiv regions, and decrease – in Odessa, Kirovohrad, Ternopil and Sumy regions. In two areas – Ivano-Frankivsk and Kyiv – the crime rate remained the same.

Fourthly, much of crimes against freedom, honor and dignity, remains unsolved. This year, the number of such crimes increased almost in half.

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PSYCHOLOGICAL CHARACTERISTICS OF OBJECTIVE REASONS OF INVOLVING CHILD INTO BAGGING

The current situation of general crisis in the country greatly distorts formation of favorable moral and psychological environment for the education of children and youth. Dysfunctional domestic environment and difficult financial situation affect families worsening crime situation among young people.

Thus, having considered objective reasons of involving child in begging, it is possible to say that, despite the large number of scientific papers in the field of research, the problem of begging children remains a large-scale phenomenon, which still has not lost its relevance.

It should be noted that the problem of child homelessness, and therefore the begging children are especially relevant for Ukraine. Therefore, we believe that it is necessary to further improve public policy in developing this system of specialized institutions. It is important not to allow weakening of interest of the state and its agencies to problems of minors who require urgent assistance and rehabilitation.

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GENERAL PROVISIONS ON CRIMINAL LIABILITY OF JUVENILES ACCORDING TO THE LEGISLATION OF THE REPUBLIC OF IRELAND

Criminal practice and changeable and dynamic social reality of recent decades, especially in Europe, have caused further development of separate system of punishment for juveniles committing criminal offenses (crimes). The system consists of relevant codified sources of criminal law of regulatory and procedural nature, containing provisions on punitive sanctions applied to juveniles, principles and procedures of their application, definition of social and penal purpose of laws on punishment of juveniles.

Thus, the law on criminal liability of minors in the Republic of Ireland contains a range of measures that are able to effectively prevent the child's acquaintance with the criminal judicial system and types of penalties usually applied to adults. A number of agencies and institutions of the Republic of Ireland has the right to monitor the environment of children and adolescents, detect signs of potential criminal activity on their part and take certain organizational and legal measures to prevent possible criminal acts in the future.

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CRIMINAL LIABILITY FOR DEFAMATION (EUROPEAN EXPERIENCE)

The right to freedom of expression, opinion, expression of opinions and the freedom of activity of the media are among the highest priorities for the development of a free, democratic, constitutional state. European Court of Human Rights states that freedom of expression is one of the main components of a democratic society and a prerequisite for its progress and development of each individual.

Although defamation laws have legitimate purpose – to protect the reputation, in fact they often impractically and unduly restrict freedom of expression. In most cases, the problem is too widespread use of such laws, the lack of adequate protection of the defendant (when the law does not provide clear explanation of what is allowed) and excessive punishment for violations. In some countries, legislation that uses the term defamation actually serves the purpose other than the protection of reputation, bringing confusion and thus diminishing the human desire to express their opinion.

Ukraine rejected the criminal prosecution for libel and insult, which should be recognized progressive and consistent with the requirements to development and establishment of a democratic and lawful state. Despite repeated attempts to amend the criminal law, Ukraine remains a supporter of freedom of speech and media.

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EXPEDIENCY AS A PRINCIPLE OF CRIMINAL LAW

The purpose of this article is to explore the essence of the principle of expediency in criminal law. Thus, in its origin and meaning the principles are objective (their formation is influenced by the political and economic situation in the country, the level of legal consciousness, legal culture, etc.). At the same time, we can not deny the fact that the observance and implementation of the principles of law depend on the actions of specific subjects, i.e. they are subjective.

Thus, we agree with S.H. Kelina and V.M. Kudryavtsev in the statement that the closer the subjective choice of the legislator to objective laws of social development, the more effective this legal system will operate. It should also be noted that, unlike the rules, the principles of law are more resistant and stable, they are fundamental. At the same time the principles are affected by historical processes that occur in the state.

To summarize, it should be noted that although the expediency complies with all signs of principles of criminal law, in the literature there is the opposite view regarding the admissibility of researched principle in the system of principles of criminal law. According to T.R. Sabitov, the reason for this, perhaps, was the identification of the expediency with lawlessness and arbitrariness in criminal prosecution, which have nothing to do with the studied principles. Therefore, further areas of scientific studies can be research of the correlation of the principle of expediency of criminal law and the principle of legality and other principles of criminal law.

CRIMINAL PROCEDURE LAW AND CRIMINOLOGY

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PROBLEMS OF PROCEDURAL STATUS OF ADVOCATE IN CRIMINAL PROCEEDING: DOMESTIC AND FOREIGN EXPERIENCE

In summary, we emphasize that procedural status of advocate in a criminal trial should primarily be based on the principle of justice because fairness is a moral and legal phenomenon and serves as a criterion for evaluating human actions. As a result of the study, based on analysis of current legislation and its implementation, the following conclusions can be made:

1. Legal basis of advocate's participation in criminal proceedings are constitutional guarantees to provide qualified legal assistance for every citizen.

2. Defender involved in criminal proceedings not only helps the suspect (accused) to protect its legal interests, provides qualified legal assistance, prevents falsification of evidence, the use of unlawful methods of investigation, neutralizes "prosecutive orientation" of a criminal investigation, but also in carries out one of the functions of the state -- protects rights and freedoms of citizens.

3. Analyzing the legal status of an advocate in criminal proceedings it is necessary to consider the general rules governing the status of advocate contained in the Law of Ukraine "On the Bar and Legal Practice", and special rules of the Criminal Procedure Code of Ukraine. Of particular importance are the international legal sources that provide the citizen's right to protection.

4. Problem of the limited range of subjects that can act as defenders in criminal proceedings is debatable. On the one hand, creating this novel of the Criminal Procedure Code of Ukraine the legislator aimed to ensure the high quality of protection of suspect (accused) and ensure the principle of confidentiality. On the other hand, the legislator limited the right to a free choice of advocate, guaranteed by the Constitution of Ukraine and international acts.

5. The regulation of the Criminal Procedure Code of Ukraine, which establishes the rule of simultaneous participation in a criminal trial of up to five other defenders of the accused, does not regulate the appropriate limit of advocates at the stage of pretrial investigation.

6. The new Criminal Procedure Code of Ukraine improved legal status of defender, compared to the Code of 1960. This is shown, in particular, in the establishment of additional procedural rights and special procedure of advocate's introduction in the criminal proceeding.

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SOME ASPECTS OF PROCEEDINGS IN ABSENTIA IN THE CRIMINAL PROCEDURE OF UKRAINE

According to Article 3 of the Constitution of Ukraine man's life and health, honor and dignity, integrity and security are recognized in Ukraine as the highest social values. Human rights and freedoms and their guarantees determine the content and direction of activities of the state, the legislative, executive and judicial powers. Their activities should be aimed at protection of human rights and equality of citizens before the law and the courts.

The study allows drawing a number of conclusions. First of all, it should be noted that introduced in the Criminal Procedure Code of Ukraine institute of criminal proceedings in absentia is today one of the most pressing issues of criminal justice, which is consistent with the general principles of criminal proceedings. However, given the problems associated with the proceedings in absentia, it should be noted that this institution needs further improvement, development of basic theoretical positions to optimize the criminal justice of Ukraine. Further research in this area should focus on the analysis of the procedural rules governing the form of criminal proceedings in absentia in the Criminal Procedure Code of Ukraine.

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OBSERVANCE OF RIGHTS OF MINORS APPLYING TO THEM PREVENTIVE MEASURE IN THE FORM OF DETENTION

Arrest and detention can be applied to a minor only if he is suspected or accused in committing a grave or especially grave crime, provided that the use of other preventive measures will not ensure the prevention of risks referred to in Art. 177 of the Criminal Procedure Code of Ukraine.

Parents of a minor or persons in loco parentis should be immediately notified about the arrest and detention of a minor.

It is important to emphasize that the purpose of a preventive measure is to ensure the implementation by the suspect or accused of his procedural obligations and prevention of the attempts:

1) to hide from the pre-trial investigation and/or court;

2) to destroy, conceal or distort any of the things or documents essential to establish the circumstances of a criminal offense;

3) to illegally influence the victim, witness, another suspect, expert, specialist in the criminal proceeding;

4) to otherwise prevent the criminal proceeding;

5) to commit another criminal offense or continue a criminal offense, in which he is suspected, accused.

The grounds for a preventive measure are the presence of reasonable suspicion that a person has committed a criminal offense, and the presence of risk that is sufficient basis for investigating judge of the court to believe that the suspect, accused, convicted can make actions specified in paragraph one of this article. Investigator, prosecutor does not have the right to initiate preventive measure without grounds provided by the Criminal Procedure Code of Ukraine (Art. 177).

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THE USE OF EVIDENCE IN THE COURT DECISIONS DURING PRE-PROCEEDINGS IN THE FIRST INSTANCE

Evidences and proofs permeate the entire criminal judicial process, describing its basic meaning. It is not an accident that problems of criminal procedural proving are characterized by particularly breadth and relevance.

However among the many developments of the theory of evidence, some questions remain scarcely explored and require immediate resolution determined by the needs of law enforcement. One of these issues is the use of evidence in judicial decisions.

In summary, it can be argued that the promising area of science of criminal procedure and criminal procedure law is further development of provisions for the use of evidence as part of the process of proof. The use of evidence in decision-making at each stage of criminal proceedings has features determined by immediate tasks of the stage and powers of the relevant subject. Specificity of the use of evidence in legal judgments in the course of pre-proceedings depends on the legal nature of the circumstances to be established. The latter may be either actual circumstances included in the subject of proof, or ones having only procedural importance.

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INSPECTION OF THE CRIME SCENE DURING THE INVESTIGATION OF INTENTIONAL COMMERCIAL DISTRIBUTION OF DANGEROUS PRODUCTS INTO THE MARKET OF UKRAINE

The new Criminal Procedure Code of Ukraine (hereinafter – CPC of Ukraine) became the catalyst for further development of criminology because one of its objectives is to develop new and improve existing criminalistic tools, tactics and guidelines regarding the collection, research, evaluation and use of evidence based on the consideration of requirements of criminal procedural law. This also applies to the question of various tactics of investigative (search) actions, the requirements to implementation of which slightly changed.

Inspection of the crime scene during the investigation of intentional commercial distribution of dangerous products into the market of Ukraine takes the main place in the investigation, and it can be called the starting point of the latter. At this stage investigator collects the actual data that will help him later in the process of proof. During preparation for such an inspection, the investigator, based on the type of dangerous products can properly determine what should experts should be engaged in it. A thorough inspection will enable the investigator to detect, capture and remove a sufficient amount of information that would collectively contribute to the formation of investigative lead, determine the direction of the investigation, and promote adoption of procedural decisions.

Proposed recommendations for inspection of the crime scene in the course of investigation of intentional commercial distribution of dangerous products into the market of Ukraine are of practical importance: they will be useful for investigators dealing with the following type of criminal offenses.

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PRECONDITIONS FOR INTERACTION OF INVESTIGATOR AND OPERATIONAL MILITIA OFFICER IN THE DETECTION AND INVESTIGATION OF CRIMES

In modern terms the investigation of crime requires collective efforts of investigative and militia officers. Interaction of investigator and operational militia officer in the detection and investigation of crime involves implementation of concerted procedural and operational search actions aimed at disclosure, investigation and prevention of crime.

Despite the fact that the topic of organizational support of effective interaction between the above entities often becomes the object of scientific interest, so far in practice the interaction between investigators and operational militia officers mostly had purely formal nature, being considered by most managers as a necessary measure.

The scientific study of the problems allowed drawing the conclusion that not enough detailed study of preconditions of interaction between investigating and operational law enforcement officers in the course of detection and investigation of crime results in complex problems of both theoretical and purely applied nature.

In this paper the additional study of theoretical, legal and factual preconditions for interaction of investigator and operational militia officer in the detection and investigation of crimes is carried out. The significance of the experience of such interaction in the detection and investigation of crimes in science as well as the need to improve practice in this area is proved. In view of the results, the main direction of improvement of the provisions of this study should be an analysis reflecting the relationship of preconditions for interaction of investigator and operational militia officer with the original provisions of the theory of interaction.

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CRIMINALISTIC CHARACTERISTICS OF TYPICAL WAYS OF COMMITTING THE CRIME CONCEALMENT

Crimes against justice, including crimes concealment (Art. 396 of the Criminal Code of Ukraine) constitute great social danger. These crimes obstruct the determination of objective truth about the crime and are aimed at complete or partial evasion of the person guilty of criminal responsibility.

One of the central places in criminalistic characteristics of crimes, including the concealment of crimes takes the way of committing crime because it is a direct carrier of information about criminal offenses; it is associated with other elements of criminalistic characteristics and is a fact to be proved. criminalistic characteristics of typical ways of concealing crimes allows developing tools, techniques and methods for detecting, recording and investigation of evidences in order to effectively identify and investigate them. This makes criminalistic study of the ways of committing crimes concealment relevant and necessary.

Criminalistic classification of typical ways of committing crime concealment, developed with respect to the mode of action and object of concealment, will help the investigator to formulate the investigative lead of the offense, the personality of offender and choose effective methods of investigation.

Prospect of further research regarding the concealment of crimes is a further development of such elements of criminalistic characteristics as typical traces, situation of crime and characteristics of offender.

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