

D. Popovsky
Doctor of Law Sciences,
Professor at the Department of International Law
and Comparative Jurisprudence,
Interregional Academy of Personnel Management

APPLICATION OF JUDICIAL DISCRETION IN THE ROMAN LAW LEGAL SYSTEM

In modern legal science question about the nature and possibility of application of judicial discretion and its limits remains debatable. The main causes of this are seen in the absence of a clear understanding of this phenomenon, its limits in law enforcement and in the lack of a theoretical elaboration of the dominant influence of law on the individual elements of the national legal systems. Given the ever-increasing role of the courts in the implementation of law, improvement and development of law, the author analyzed the characteristics and fundamentals of judicial discretion in one of the three main contemporary legal systems of the world. The general problem of judicial discretion refers to those legal issues that inevitably arise in any legal system. Of course,

even within the legal system the field of judicial discretion can vary quite significantly. However, this does not mean that for some reason, judicial discretion can be eliminated altogether. Analyzing the Roman law (civil law) legal system and comparing with the system of “common law”, it is seen that each of them is associated with a well-defined notion of judicial discretion, and therefore the analysis of the problem in different legal systems depends on the concepts of law itself. And since this phenomenon is something objective, its jurisprudence should be comprehensively studied. In addition, it seems relevant to explore the possibility of using the issue of judicial discretion by the courts of our country, in particular – the Supreme Court of Ukraine.