MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE
INTERNATIONAL HUMANITARIAN UNIVERSITY

SCIENTIFIC HERALD OF INTERNATIONAL HUMANITARIAN UNIVERSITY

Series:

JURISPRUDENCE

COLLECTION OF SCIENTIFIC PAPERS

Edition 9-2 volume 1

Odesa
2014

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

Series was founded in 2010

Founder – is International Humanitarian University

It is published by the decision of Academic Council of International Humanitarian University
protocol № 1 from the 25th of September 2014

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

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

THEORY AND HISTORY OF STATE AND LAW; PHILOSOPHY OF LAW

V. Abashnik
Doctor of Philosophy,
Department of Humanities and Fundamental Juridical Sciences,
Kharkiv University of Economics and Law

HANS KELSEN'S EARLY PHILOSOPHICAL AND LEGAL POSITION

In the article the early philosophical and legal position of the famous Austrian-American jurist Hans Kelsen (1881–1973) is presented. The features of his study at the Vienna University (1901–1906) are given in the beginning, e.g. the influence of his Vienna professor Edmund Bernatzik (1854–1919).

Further Hans Kelsen's interpretation of the juridical and philosophical work of the great Italian thinker and poet Dante Alighieri (1265–1321) in his main early German work "Die Staatslehre des Dante Alighieri" (1905) is considered. Hans Kelsen's philosophical and legal position in ten chapters of this work is analyzed. The young Austrian jurist has reviewed "De Monarchia" (1310/1317), the most important juridical work of Dante Alighieri.

In Hans Kelsen's work "Die Staatslehre des Dante Alighieri" (1905) such philosophical, legal and juridical problems, as the state and the church, the monarch and the Pope, the monarch and the people, the forms of statehood, Dante's universal monarchy etc. are analyzed.

In the conclusion the influence of Hans Kelsen's early philosophical and legal position in his later works "Allgemeine Staatslehre" (1925) and "Die philosophischen Grundlagen der Naturrechtslehre und des Rechtspositivismus" (1928) is pointed out.

M. Dolynska
Candidate of Law Sciences, Associate Professor,
Associate Professor at the Department of Economic and Legal Disciplines,
Lviv State University of Internal Affairs

OVERVIEW OF THE REGULATION ON PUBLIC NOTARY OF UKRAINIAN SSR IN 1964 AS A SOURCE OF UKRAINIAN NOTARY LEGISLATION

The research is devoted to the issue of legal regulation of notarial activities in Ukraine.

This paper analyzes the laws that regulate the activities of Ukrainian notaries throughout the 1960th.

In the 60th new codification of civil, procedure, family, collective, land, and other laws was carried out. Thus, there is a need for legislative changes in the provisions of legislation on notaries.

The author analyzes the provisions of the State Notary of Ukrainian SSR dated August 31, 1964.

The bodies entitled to perform notarial services include: public notaries, and in localities where notaries are not organized – city, town and village soviets of working people's deputies.

The research examines the requirements for persons who wish to become notaries and the procedure of their appointment. Only persons with a law degree were appointed to the position of notary.

The author considers the competence of public notaries and city, town and village soviets where there were notaries concerning notarial acts.

Restriction of the right of notarial acts is also considered in the article.

Notary and staff of notaries are obliged to observe secrecy concerning notarial acts performed by them, and of assigned cases and documents.

The author concludes that the provisions on public notaries in Ukrainian SSR in 1964 led notarial laws into line with civil law. Notarial acts of notaries are determined not only by the city, town and village soviets, but also by the executive committees of district councils since 1966.

V. Dronov
Assistant Lecturer,
Department of Constitutional Law and State Administration,
Odessa International Humanitarian University

PUBLIC-PRIVATE PARTNERSHIP IN EDUCATIONAL SPHERE: PROBLEMS OF THEORY AND PRACTICE

Public-private partnership (PPP) in the sphere of higher education is very important, especially in such progressive form as execution of governmental orders for training of specialists, scientific, teaching staff and labour force, advanced training and retraining by privately owned institutions of higher education. According to the Law "On Creating and Placing Governmental Orders for Training of Specialists, Scientific, Teaching Staff and Labour Force, Advanced Training and Retraining", such institutions are not included to list of executors of governmental orders. However, today this can not be recognized as right. Lawmaker emphasizes importance of public-private partnership. According to the Law "On Higher Education" one of the principles of the politics in the sphere of higher education is promotion of public-private partnership in this sphere. This Law regards state, municipal and private institutions of higher education mainly as an equal.

According to the Law "On Public-Private Partnership", a cooperation among state of Ukraine, Autonomous Republic of Crimea, territorial commons represented by appropriate governmental bodies and bodies of local self-government and corporate bodies except government-owned and municipal enterprises, or individual entrepreneurs (private partners) is exercised on the ground of agreement according to the procedure stated by this law and other legislative acts. Thus, PPP in a broad understanding is any cooperation among state and private sector including the sphere of higher education and execution of governmental orders by privately owned institutions of higher education. However, some criteria stated by this law, definite terms and objects, limit the sphere of PPP. These criteria do not allow considering execution of governmental orders by privately owned institutions of higher education as PPP, even if such execution is allowed by law in future. Thus, we propose to make appropriate changes to legislation.

N. Dushek
Postgraduate Student,
Department of Theory and History of State and Law,
Lviv State University of Internal Affairs

LEGAL ANALYSIS OF THE PHENOMENON OF LAW-MAKING

The increasing complexity and significant acceleration of economic, political and social processes determine the need to find a qualitatively different approach to many unsolved and new problems in law-making and state building in modern Ukraine. Supporting the opinion of the vast majority of Ukrainian scholars, it can be argued that the theoretical results and conceptual position of legal science, which has been formed for centuries, require a new vision, redefining "frozen", "eternal" scientific categories, concepts, principles, from methodological point of view as well as in terms of the necessity, reasonableness and appropriateness.

The current process of development of legal institutions in Ukraine takes place in terms of transformation in many areas of society. This is determined by the deepening global trends of globalization and international integration, on the one hand, and internal features of the formation of national political and economic traditions of the state – on the other hand. This process is caused by the transformation period of social development and complication of social relations, which not only requires improvement of normative legal acts, but also enhances research on the issue of law formation, law-making activity and institution of law implementation. Development and improvement of resources (forms) of law of any state is directly associated with law-making phenomenon that is a complex social institution (the process) of creation of law as a system of mandatory legal rules that are manifested in the legal awareness and legal culture of the whole population as well as of individual citizens.

The present time actualizes the need for a comprehensive study of law-making activity as a multidimensional phenomenon, which is caused by the intensity of law-making process in Ukraine, trends of globalization and harmonization of the legal framework, strengthening of the political factor in the field of law-making. These processes of transformation of law encourage exploring the contemporary features of law-making in different areas of legal regulation.

Effective mechanism of law is the basis of stability and flexibility of the legislative framework that aims to preserve the harmonious development of social relations, guaranteeing inviolability of human rights and lawful interests of subjects.

O. Kanenberh-Sandul
Postgraduate Student,
Department of History of State and Law,
National University "Odessa Law Academy"

THE CHARTER ON COLONIES OF FOREIGNERS IN THE RUSSIAN EMPIRE OF 1857: HISTORICAL AND LEGAL ANALYSIS

The article is devoted to consideration and the analysis of a legal status of the German colonists according to the charter on colonies of foreigners in the Russian Empire of 1857. The charter on colonies of foreigners in the Russian Empire was adopted in 1857 and consisted of 9 sections, 30 chapters, 529 articles.

Section 1 "Division of colonies and establishment of their administration" (Art. 1-108) specified classification of the German colonies existing by 1857, their governing bodies and self-government, as well as functions, structure and ways of formation of these bodies. Section 2 "On the civil status of colonists" (Art. 109-140) specified general characteristics of the status of colonists as special kind of peasants in their social status. Section 3 considered issues "On the civil rights of colonists" (Art. 142-186). Section 4 "On duties and taxes of colonists" (Art. 187-301) was devoted to settlement of a set of the questions connected with the taxation of colonists. Section 5 "On provision of amenities for colonies" (Art. 302-380) regulated various questions connected with economic activity of colonists. Section 6 was called "On deanery in colonies" (Art. 381-435). Section 7 "On charges and fines" (Art. 436-481) listed charges for violation of various provisions. Section 8 "On judicature and punishment" (Art. 482-503) specified procedure of consideration of various lawsuits with participation of colonists. The charter about colonies completed section 9 "On the colonists settled on their own lands and on lands of private owners" (Art. 504-529). The charter on colonies of foreigners in the Russian Empire legislatively provided the right of colonists for self-government in colonies, their certain independence. The national policy of the state was directed on support of colonists, assisting them in their economic activity.

U. Kuzenko
Degree Seeking Applicant,
Department of Theory and History of State and Law,
Lviv State University of Internal Affairs

PLACE AND ROLE OF POLITICAL FUNCTION IN THE SYSTEM OF FUNCTIONS OF THE MODERN STATE

The article is devoted to the research of important and actual theme. In fact, the study of political function of the state in the modern terms of globalization and deep transformations of the political sphere has an outstanding theoretical and practical value.

It is specified, that the political function of the state is, above all things, directed on creation of democratic society, provision of its unity, as if it was an integral social organism. Difficult and extraordinarily many-sided activity of the state in a political sphere is the essential basis for effective implementation of all other state functions.

Structurally, the political function of the state consists of such elements: provision of democracy, i.e. people's participation in formation of authorities and acceptance of state decisions; defence of rights and freedoms of man in the state; provision of state sovereignty; formation of the political system of society; creation of democratic terms for self-government, as well as formation of civil society; protection of the constitutional order from its violent change or overthrow, and territorial integrity of the state.

It is marked that the important aspect of political function of the modern Ukrainian state in the conditions of globalization is provision, defence and strengthening of principles of state sovereignty. Every nation-state has inviolable right for protection of interests of the citizens to live according to their own laws, norms and traditions, elect the effective political system, set the political regime, and provide the protection of inviolability of state boundaries.

O. Melnychuk
Candidate of Law Sciences,
Associate Professor, Doctoral Candidate,
National University "Odessa Law Academy"

EXTERNAL SOURCES OF URBAN LAW: CONCEPT AND TYPES

The article proves that the institutionalization of the urban legal system depends on the existence of two types of sources of urban law: external and internal. Special attention in the paper is paid to external sources of urban law, such as formal documents of legal content emerging in national, supranational and international legal systems, enabling the existence of urban legal norm.

The main components of the system of external sources of urban law are normative acts. As a rule, such acts are the part of national legal system; they regulate relations in the spheres of constitutional and municipal law. Author shows, that legislative regulation of urban legal relations in Ukraine is not perfect. For example, only two cities in Ukraine have the defined status.

The next important external sources of urban law are international treaties. International treaties in urban sphere are the new tendency in international relations. Besides, in most cases the initiative of creating such treaties comes from local authorities, but not from the states.

Author also emphasizes the role of acts of interpretation in the system of external sources of urban law, especially – the decisions of the Constitutional Court of Ukraine.

However, the sources of urban law are not limited by the documents created by state or its authorities. The main feature of urban law is that such a legal system has its own internal sources of law, which are independent from state.

S. Nesynova
Candidate of Law Sciences,
Associate Professor at the Law Department,
Dnipropetrovsk Alfred Nobel University

LEGAL INSTITUTES IN THE CONTEXT OF INTERACTION AND DEVELOPMENT OF LAW AND MORALITY

In connection with the global changes that have taken place in various areas of society, the study of the essence and features of the coexistence of legal institutes with institutes of morality should contribute to a deeper understanding of the role of law in the society. The law is the determinant of institutes of morality that supports and protects the moral principles of society.

The relationship of legal institutes with institutes of morality is seen through their unity, difference, interaction and contradiction.

Legal institutes have social and legal character, and to some extent reinforce institutes of morality in law. Nature and effectiveness of legal institutes on the first place depends on how adequately it (legal institute) expresses the demands of society in respect of legal recognition of institutes of morality. Authority of laws increases if they are based not only on the powers but also on morality. Activity of institutes of morality to a large extent depends on the specific functioning of the legal system as a set of legal institutes and other legal phenomena of the legal spheres of society.

The author substantiates the need to take into account moral and cultural background during the scientific research on legal institutes. Also, the article presents some proposals for improvement of the normative regulation of legal institutes in the modern period of decline of the legal culture of society.

N. Paslavska
Assistant Lecturer at the Department of Fundamentals of Law,
Ivan Franko Lviv National University

HISTORICAL EXPERIENCE OF IMPLEMENTATION AND OPERATION OF THE CONSTITUTIONAL COMPLAINT IN THE FEDERAL REPUBLIC OF GERMANY

This article is devoted to one of the most prominent decisions ruled by the Federal Constitutional Court of Germany.

On January 15th, 1958, the Federal Constitutional Court of Germany (FCC) pronounced a judgment that became one of the most quoted in its history because of its value to the understanding and application of fundamental rights in Germany: the famous "Lüth" decision, which was the result of a constitutional complaint brought by Erich Lüth, a former member of the Hamburg Senate.

In the early 1950s, Lüth had decided to call upon film distributors and the public to boycott Veit Harlan's movie. His reasoning for this appeal was the fact that Harlan had a prominent role in the Nazi propaganda machine, serving it with antisemitic movies. After having lost several civil lawsuits, Lüth asserted the violation of constitutional rights. Several years later, he was to be proved correct: The Federal Constitutional Court ruled that Lüth's complaint was covered by the right to freedom of speech guaranteed in Art. 5 of the German Basic Law (Grundgesetz).

The Court stressed that the fundamental rights, which are implemented in the Grundgesetz are not only important as subjective rights that protect the individual against state intrusions into the private sphere. As a whole they also unfold an objective dimension in representing society's crucial values. And for that reason, they govern the entire legal order – including civil law. This was indeed understood as a staggering conclusion with which the Court went far beyond the issue at stake.

O. Savchenko
Lecturer at the Department of Criminal Disciplines,
H.S. Skovoroda Kharkiv National Pedagogical University

EVOLUTION OF THE LEGAL CONSOLIDATION AND REGULATION OF EDUCATIONAL WORK WITH JUVENILE CONVICTS IN UKRAINE IN 1918-1935 YEARS

The development of modern penal legislation, including rules governing the treatment of juvenile convicts sentenced to imprisonment, is impossible without the experience of past years. Therefore, we consider it appropriate to refer to history of educational work with juvenile convicts for its improvement at this stage, search for the best means of correcting this category of persons.

The purpose of this paper is to study the development of a system of institutions for juvenile convicts in Ukraine and regulation of educational work with them during the Soviet period.

The author notes that the lack of clear scientific guidance and experience was a serious obstacle to the reform of penal institutions. It was concluded that the legal basis for the functioning of correctional institutions for juvenile convicts, which was established in the pre-revolutionary period, was abolished and replaced by another system, which, according to its creators, was considered more humane towards juveniles and minors. It was believed that most of the crimes had been done because of ignorance, and a new life in the state of workers and peasants would gradually eradicate the conditions that contributed to commitment of socially dangerous acts. However, despite the change of a type of correctional institutions for juveniles, the main means of correction as before the revolution was the combination of general and professional training with education.

A. Timchenko
Candidate of Law Sciences,
Associate Professor at the Department of Sectoral Legal Disciplines,
Berdiansk Institute of State and Municipal Management,
Classical Private University

DISTINCTION OF CONCEPTS "LEGISLATION EFFECTIVENESS" AND "EFFECTIVE LEGISLATION"

This article contains justification of necessity of distinction of "effective legislation" and "legislation effectiveness". Author notes, that concept "effective legislation" covers primarily quality characteristic and answers the question "what kind?", but concept "legislation effectiveness" covers quantitative characteristic and answers the question "to what extent?". The author considers that the basic attributes of effective legislation are such features as legislation quality; systematicity; ability to provide interests of subjects of legal relations; accordance. Thus, it is proposed to understand effective legislation as concerted system of quality law acts, whereby subjects of legal relations are really able to provide their interests in accordance with general principles of law and lawful state. The author considers that introducing the concept "effective legislation there is no need to say about effectiveness in statics and in dynamics, or about effectiveness of law and effectiveness of its action. Both ideal state of the object and highly effective legislation can be defined through the concept "effective legislation". In addition, the author thinks, that legislation effectiveness should be researched not only from the viewpoint of its content, but also its form. It must be considered, that the concept of effective legislation means quality characteristic, but concept "legislation effectiveness" means quantitative characteristic. That is why legislation effectiveness is the level of providing interests of subjects of legal relations in accordance with general principles of law and lawful state. Having defined legislation effectiveness, the degree of effectiveness of legislation can be revealed. Legislation effectiveness should be considered as system phenomenon, which has definite components. The development of these components reflects definite level of knowledge and provides further development of cognitive activity in this area as well as facilitates solution of practical problems with formation and functioning of national system of legislation and increases the level of its effectiveness.

O. Turchak
Deputy Head of the Faculty,
Lviv State University of Internal Affairs

STUDY OF STATE LEGAL INSTITUTES OF THE SECOND POLISH REPUBLIC IN THE POLISH HISTORIOGRAPHY

The study of state and legal institutions of the interwar Poland in the national historical and legal studies is quite presentable.

The First World War destroyed the state legal system and boarders in Europe that had been fixed by the Congress of Vienna in the early nineteenth century. New political realities of postwar Europe led to dramatic changes in the Central Eastern and Southern Europe, the emergence of new independent states, including Poland. The formation of the public-political system of the restored state (which according to historical tradition was also called the Second Commonwealth of Poland), its development, and regulation of boarders were influenced by many internal and external factors. The inside specificity of the newly formed state was determined by the fact that territories, which since the end of XVIII century had been the part of various government entities (central Poland with its capital Warsaw was under the Russian Empire, the southern and south-eastern lands – within Austria, the north-western lands – under Prussia) united in a single state organism. Such diversity led to different process of restoration of national Polish government in that region. The peculiarity of the Polish state was also determined by a large number of non-polish populations, including Ukrainians, who because of political realities after the First World War were in a new state.

The study of state and legal institutions of interwar Poland has not been the subject of a separate study in Ukrainian historical and legal sciences yet. The topic was studied only sporadically in the context of the study of common problems of history and law of the Second Polish Republic (V. Komar, A. Krasivskyi, I. Soliar, B. Tyshchyk etc.)

There are several directions of research in historical legal studies of the Second Polish Republic: works of the interwar time researchers; works of emigrated Polish scientists, mostly in the Great Britain (1940-1960) who were free of ideological influence of Polish communist government (V. Pobuh-Malynovskyi); general works of scientists of the Polish People's Republic (1940-1970), and works of researches under the ideological influence of the Polish United Workers' Party (A. Ajnenkel, Y. Bardakh, R. Torzhevskyi and others); study of state and legal institutions since 1980th determined by the objectives of formation of democratic Poland.

T. Schetinina
Candidate of Historical Sciences,
Associate Professor at the Department of Business Administration and Law,
Poltava State Agrarian Academy

HISTORICAL ASPECTS OF LEGAL REGULATION OF THE CONTRACT FOR THE DELIVERY OF AGRICULTURAL PRODUCTS

The article deals with the problems of history of state and law of Ukraine on the historical aspect of the legal regulation of the contract for the delivery of agricultural products.

In modern jurisprudence proper attention should be paid to the legal regulation of contracts for the delivery of agricultural products.

They occupy an important place in the economic cooperation between the State and agricultural producers.

Scientists investigated and analyzed the current legislation of Ukraine on regulation of contract for the delivery of agricultural products.

The aim of the article is the analysis of legal regulation of the contract for the delivery agricultural products in the context of the historical past of Ukraine.

It gives the opportunity to demonstrate that in the Soviet times one of the types of economic contract was transformed into a rigid political mechanism of totalitarian state control over the peasantry.

The main task of the research is: coverage of legal acts of the Soviet authority, the norms which regulate the procedure of the contracts for the delivery of agricultural products; determination of socio-economic consequences of such practices of contracting, which was designed to solve not only economic, but also political tasks of the authorities in the USSR. In the article the author considers the fundamental difference of the mechanisms of the procurement of agricultural products for the state needs that was in Soviet times, because this procedure was carried out by the conclusion of the contract of delivery.

Such a contract totally fit within the implementation of the state plan and did not consider or did not meet the interests of agricultural producers.

The contracts for the delivery of agricultural products began to be widely practiced in the Soviet state in 20-30th years of the twentieth century. The practice of total pressure on agricultural producers from the state, provided by a mechanism of contracting for the delivery of agricultural products, negatively affected rural development in the USSR. In Ukraine the contracts for the delivery of agricultural products actually acted as a tool of the Holodomor (forced famine).

Legislation of 60-80th years of the twentieth century did not have such a severe pressure, but still subordinated interests of farmers to the interests of the state.

Thus, the historical analysis of the legal regulation of contracts for the delivery of agricultural products shows that in a totalitarian society, even elements of economic activity act as its instruments.

CONSTITUTIONAL AND MUNICIPAL LAW

M. Beliaieva
Candidate of Law Sciences,
Associate Professor at the Department of the Core Legal Disciplines,
Dnipropetrovsk State University of Internal Affairs

INSTITUTIONS OF CIVIL SOCIETY IN THE MECHANISM OF REALIZATION OF THE POLITICAL FUNCTIONS OF UKRAINIAN STATE

The article investigates the role and importance of non-governmental institutions in the mechanism of realization of the political functions of Ukrainian state.

The political function of the state is realized during the activity of the state authorities and local self-governments, as well as non-governmental institutions. Indirect impact on state and local authorities and their officials is maintained by political parties, movements, civil society organizations, unions and others. Solid foundation of interaction between civil society and democratic state is, first of all, the creation of an institutional framework for constant participation of nation and civil society organizations in managing the affairs of state and society, impact on the organization and formation of the system of public authorities, control over its activities. The interaction of civil society and government ensures effective implementation of the political functions of the state.

The role of non-governmental institutions in the mechanism of realization of the political functions of Ukrainian state is most evident through the activities and functioning of political parties and civil society organizations, which have sufficient capacity that allows citizens to participate in political decision-making on vital issues and to exercise control over their execution.

The inclusion of civil society in this mechanism provides solution of a number of important problems: 1) public participation in making decisions on political development of the state, which allows taking into account the interests of the general public and thereby creating bases for legitimacy of decisions of public authorities in the political sphere; 2) the process of participation of citizens in solving problems in the political sphere; 3) transparency of the relevant public authorities and the creation of effective mechanisms for public control of their activities.

The author defines trends of development of civil society that are not only important in the political and legal aspects, but also form a single set of measures to ensure the organization of an efficient mechanism for implementing the political function of Ukrainian state, improve the functioning of the state in the political sphere as a whole.

S. Kvach
Candidate of Law Sciences,
Senior Lecturer at the Department of Constitutional,
Administrative and International Law,
Mariupol State University

PARTICULAR QUALITIES AND COMPONENTS OF THE PROCESS OF CONSTITUTIONALIZATION OF LAW

Many authors defined the process of constitucionalization differently. Constitutionalization is often considered as a process of enshrining the norms of law in the text of the Constitution.

The author defined the constitucionalization in two aspects: in the narrow sense as a process of enshrining norms of law in the text of the Constitution, and in the broad sense, bringing a whole system of social relations and legal life in accordance with constitutional requirements.

The process of constitutionalization is not limited to the procedure of building a legal system based on the requirements of the Constitution; it requires compliance with the Constitution and the legal processes and procedures.

With the term "constitutionalization" in broad sense, the term "constitutionalization of law" includes:

1) compliance of the system of national law with the norms and principles of the Constitution;

2) adoption of organic laws and rules that comply with the requirements of the Constitution;

3) adoption of acts of interpretation of the Constitution;

The phenomenon of constitucionalization of law in relation to international law is a manifestation of the following processes:

1) the process of fixing internationally accepted norms and principles in national Constitution;

2) the process of enshrining in international instruments (mainly charters and conventions) the rules contained in national constitutions and in the fundamental laws of the member states of the convention;

3) the creation of supranational constitutions.

The process of constitucionalization leads to the stability of the whole system of law.

I. Pospielova
Postgraduate Student,
Legislation Institute of the Verkhovna Rada of Ukraine

CONCEPT AND PECULIARITIES OF PRE-ELECTION CAMPAIGN AS A STAGE OF ELECTORAL PROCESS

This scientific article studies a concept of the pre-electoral campaign as a complicated political and legal phenomenon of the electoral process. Electoral process appears as an independent form of the respective complex of state legal relations maintaining preparation and carrying out of elections. One way or another, but disclosure of the concept of electoral process is inseparably related to legal process of organizing and carrying out of elections. That is why an electoral process may be defined as a technological infrastructure and form of implementing constitutional principles of organizing elections and ensuring electoral rights of man and the citizen within the limits of a set of electoral actions and procedures stipulated by the law, which ensure implementation of a political right of a citizen to vote and to be elected to state and local authorities.

Pre-electoral campaign is also considered as a stage of the electoral process along with such stages as nomination of a candidate for member of parliament; creation of electoral commissions; registration of candidates for members of parliament, voting, and summing up election results etc.

As far as electoral process as a political and social phenomenon is very rapid and is limited in time by campaign period, then pre-electoral campaign is one of all stages of electoral process, which does not comply with the succession principle to the full extent. However such position is not substantial and does not leave in doubt distinguishing of pre-electoral campaign as an independent stage of electoral process, as it has its own peculiar purpose, specific circle of subjects, and stipulates certain electoral actions and procedures.

It should be noted that functional purpose of pre-election campaign as a stage of electoral process is ensuring a maximum possible transparency of this process, obtaining full and reliable information about the candidates for elected positions and their programs by electors. It envisages a necessity for its clear regulation. Moreover, a particularity of this stage stipulates the fact that it bears conflict of private and social interests, the balance of which is not always possible to maintain via legislation.

Pre-election campaign as a stage of electoral process represents an informational and legal regime clearly defined by time limits of campaign period, the purpose of which is to induce electors to vote for or against certain candidates of political parties. A right to pre-election campaign is not stipulated by the Constitution of Ukraine, but the meaning of this right has a constitutional and legal nature, based on the internal system re-

lations of this right with constitutional institutes of free elections, right of citizens to participate in governing of state affairs, principle of political and ideological pluralism, freedom of speech etc. A right to pre-election campaign, being a type of political rights and freedoms of a person and citizen affects normative contents of passive as well as active electoral right, in particular: it impacts will and behavior of electors, and also ensures each authorized person of electoral relations with a possibility to bring the essence of pre-electoral programs to the notice of electors by means of campaign technologies.

ADMINISTRATIVE, FINANCIAL, TAX LAW

S. Bratel
Candidate of Law Sciences, Associate Professor,
Head of the Department of Administrative Activity,
National Academy of Internal Affairs

THE RIGHT OF CITIZENS DURING THEIR APPEAL TO THE STATE AUTHORITIES AND LOCAL SELF-GOVERNMENTS: COMPARATIVE AND LEGAL ANALYSIS

Based on the study of foreign legislation, the experience of regulatory consolidation of rights of citizens when considering their appeals to state and local authorities is analyzed. The relevance of this topic is determined by the fact that the appeal to the state authorities and local self-government is not only a means to protect personal rights and legitimate interests, but also a form of direct participation in public affairs, and one of the ways to control the public administration. Really, economic, social, and foreign policy is implemented as a result of complex interactions of different social groups. Compliance with legal interests and consideration of the views of all citizens, regardless of their nationality, religion, political or other opinion – it is the duty of a democratic state. According to the Art. 1 of the Law of Ukraine "On Citizens' Appeals", citizens of Ukraine have the right to appeal to the state government, local self-government, public associations, enterprises, institutions and organizations regardless of ownership, media, officials and their functional responsibilities with criticism, complaints and suggestions regarding their statutory activities, application or petition for the implementation of its socio-economic, political and personal rights and legitimate interests and claim their violation. Thus, citizens can exercise their constitutional right to appeal, which is enshrined by the Art. 40 of the Constitution of Ukraine.

Unfortunately, rights and freedoms of man and the citizen in Ukraine are not yet of real value. There are violations of economic, social, civil, political and other rights. Impunity for such violations does not contribute to a legal culture of society, but undermines confidence in the stability of democratic institutions of the state. Right now citizens of the country need to improve mechanisms for the full protection of their rights and interests, to develop a new system of relationships with different branches of authority.

The author concludes that, analyzing legislation on appeals in the countries of former Soviet Union, it should be noted that in most of them during the appeal to the state authority and local self-governments, citizens to some extent are entitled with rights that they can use when filing an appeal, but there are countries where citizens' rights are limited to complaints, and in some countries there are no such statutory rights at all.

D. Hetmantsev,
Doctor of Law Sciences,
Professor at the Department of Finance Law,
Law Faculty,
Taras Shevchenko Kyiv National University

ON TAXPAYERS' ABUSE OF THEIR RIGHTS

The article is devoted to the problems of legal regulation of such a difficult and controversy issue as tax evasion. Author, referring to the works of national and foreign researches, analyses common philosophical approaches to tax evasion, trying to answer the complicated and multi-faceted question about morality of tax evasion based on the different circumstances.

The author suggests his own methods of classification of tax evasion.

The first one is a change or improvement of production by a taxpayer in such a way to be able to increase an achieved value-added cost under the current tax regime without changing, or even reducing tax pressure. It does not concern a breach of law, but an organization of internal process of production in such a way to reduce or not to increase taxable object. In this very case an incentive or disincentive function of tax is revealed. Positive or negative influence of tax on increase of production efficiency and its profitability, in particular, depends on tax composition. Coordination of tax evasion process in a proper direction for incentive, but not for prevention of economic increase shall depend on the level of governmental tax capacity. This also includes tax optimization, a selection of method, among several possible methods of execution of a transaction, corresponding to its economic meaning that shall impose the lowest tax burden of a taxpayer. The mentioned action of a taxpayer is absolutely lawful; its form complies with the economic content and does not cause tax requalification under the common rule in any country.

Another type of tax evasion is when a taxpayer directly breaches current legislation. This includes fraud, combined with other relative components of crimes or breaches. In addition, an objective part of criminal act certainly consists of composition of fiscal (tax) breach. Commission of the mentioned action gives rise to protective legal relations that are subsequently (on the basis of a relevant legal fact – act of authorized governmental body) converted into relations of fiscal liability.

And the third, the most difficult tax evasion is an abuse of rights by taxpayer. In this case it is not a breach of legislation, because a taxpayer conducts transaction or executes a deed within the current legislation with an exclusive or primary purpose to avoid taxation or essentially reduce tax burden. The American legislation specifies such actions as tax avoidance, contrary to the tax evasion that means direct breach of current tax legislation.

The author pays special attention to the third method of tax avoidance, revealing considerable features of abuse of rights by taxpayers and offering a new term - tax chicane that means an intended act (or scope of interrelated actions) of a taxpayer, committed within the legislation, exclusive and primary purpose of which is to reduce

tax liability of taxpayer, or other persons in the present moment or in the future due to concealing a real nature of economic transaction by distorting its form, causing requalification of tax consequences without making a taxpayer liable and recognition the transactions that process an appropriate deed as invalid.

T. Holovko
Lecturer at the Department of Criminal and Civil Law,
Law Faculty,
Private Higher Educational Establishment "European University"

GUARANTIES OF REALIZATION AND PROTECTION OF FOREIGNERS' RIGHTS FOR EMPLOYMENT IN UKRAINE

The article analyzes the etymological origin of the term "guaranty". Based on analysis of the views of scholars, the essence of the legal and judicial guaranties is determined. Guaranties in the field of labour relations are described. Guaranties for realization and protection of the foreigners' rights for employment in Ukraine are determined, their list and definitions are offered. Only legal confirmation of the right to work, though at the constitutional level, is insufficient. The presence of effective measures provided by state is necessary for the implementation of the above law. Thus, the current national legislation provides employment institute as a structure designed to ensure the individual's right to work. The possibility for foreigners to realize their right to work, enshrined in the provisions of the Constitution of Ukraine, must be accompanied by appropriate guaranties to ensure confirmation with this right. Thus V.I. Dahl in his explanatory dictionary notes that the word "guaranty" means a surety, warranty, security. In turn, Large explanatory dictionary of modern Ukrainian language notes that guaranty is an assurance for something or for the fulfillment of a condition; prescribed by law or specific agreement obligations which makes a legal or natural person responsible to the persons in the event of failure to perform their obligations; conditions for success of something.

The conclusion is made that guaranty of foreigners' employment in Ukraine should be understood as legally enshrined conditions and means providing possibility of exercising the foreigners' right to work, as well as protection and defense of such a right from illegal inroads. The basic guaranties for foreigners' employment in Ukraine include assurance for: free choice of activity; receipt of salary; occupational guidance and training; opportunity to appeal against decisions that led to the violation of rights, freedoms and interests of foreigners for employment; those responsible to be brought to responsibility for violation of legislation on employment.

S. Korsun
Candidate of Psychological Sciences, Associate Professor,
Associate Professor at the Department of Legal Psychology,
National Academy of Internal Affairs of Ukraine

IMPLEMENTATION OF THE UN CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM IN UKRAINE

The article examines the process of implementation of the rules of the United Nations Convention "On the Suppression of the Financing of Terrorism" in the legal system of Ukraine. In particular, the analyzes include: the introduction of criminal liability for acts within the definition of the financing of terrorism; the rules of national legislation designed to prosecute legal persons for acts deemed criminal by the Convention; control over operations with monetary funds and other property; preparing a list of organizations and individuals involved in terrorism activities; suspension of operations and seizure; prevention of preparation of crime.

The process of implementation of rules of the United Nations Convention in the legal system of Ukraine is considered in the article "On the Suppression of the Financing of Terrorism". The issues of criminal responsibility for acts within the concept of financing of terrorism are analyzed in the article. The rules of the recently adopted national legislation are considered. They introduce a mechanism of liability of legal persons for acts deemed criminal by the Convention. Attention is paid to the operations with the cash and other assets that can be used by individuals and legal entities for financing the terrorism. The existing regulatory framework for drawing up a list of organizations and individuals involved in terrorist activities was analyzed in the article. Furthermore, aspects of the procedure of suspension of operations and seizure of persons suspected of financing the terrorist were determined. The measures for combating terrorism and its financing are considered in the article.

I. Kostenko
Postgraduate Student,
Department of the Core Legal Disciplines,
Faculty of Law and Mass Communications,
Kharkiv National University of Internal Affairs

STRUCTURE OF THE MECHANISM ENSURING THE RIGHTS OF INDIVIDUALS TO ACCESS INFORMATION THAT IS AT DISPOSAL OF COURT

This article discusses constituent elements of the mechanism to ensure implementation of rights of individuals to access information that is at disposal of court.

In the view of generalization of scientific positions regarding elements of the mechanism to ensure implementation of rights of man and the citizen, it has been concluded that there are two approaches to determination of the components of this mechanism: broadside and precise. Broadside approach sees almost all legal means without which citizens aren't able to exercise their legal right as elements of the mechanism of enforcement of implementation of rights of man and the citizen; precise approach systematizes the aforementioned legal instruments according to certain criteria.

It has been proven that provision of all existing legal means, application of which enables to create conditions for implementation by man and the citizen of legal rights granted to him, does not allow suggesting the mechanism for ensuring implementation of rights of man and the citizen as a coherent system. In connection with this, it was proposed to consider legal relationship between authorized state bodies and citizens pertaining to implementation of rights of man and the citizen as a criterion that allows combining interrelated elements into a single mechanism.

Taking into consideration peculiarities of this legal relationship, it has been concluded on singling out the following elements of the mechanism of enforcement of implementation of rights of man and the citizen: normative material, institutional, procedural and processual.

It has been accentuated that these are such elements that constitute the mechanism of enforcement of implementation of rights of individuals to access information that is at disposal of court. In particular, normative material element involves existence of current legislation in the field of access to information that is at disposal of court, within the limits of which specified legal relationship is realized; institutional element is represented by court as an administrator of information that is at its disposal; the core of procedural element consists of administrative procedures, within the limits of which the court ensures implementation of rights of individuals to access information that is at its disposal; processual element involves bringing judges to justice for infringement of legislation on access to public information and appeal of decisions, actions and omission of judges in accordance with rules of administrative procedure.

F. Krasnoiarov
Degree Seeking Applicant,
State Scientific and Research Institute
of the Ministry of Internal Affairs of Ukraine

ON THE CONCEPT OF ADMINISTRATIVE PROVISION OF FORMS AND METHODS OF MANAGEMENT OF INTERNAL AFFAIRS BODIES

The article defined the meaning of "legal provisions", "administrative and legal support" as well as the features of the administrative and legal provisions of forms and methods of management of internal affairs bodies. The relevance of the topic is manifested in the fact that the national scientific practice is characterized by a variety of approaches to analysis of the concept of "legal provisions" and the absence of a unified definition of this legal category. This circumstance is caused, firstly, by the longtime focus of theorists and scholars of administrative law on the study of the aspects of legal provisions in the field of human rights and freedoms, which left considerable shade on the institute of legal support in general, and administrative and legal support, in particular. Secondly, most modern studies reveal the concept of administrative and legal support in a particular area of regulation somewhat veiledly, mostly in the context of the categories of "administrative regulation" and "mechanism of administrative and legal regulation".

This approach, in particular, can be found in the monograph of I.M. Shopina, researches of V.U. Kryvenda, who summarized the features of forms and methods of public security militia, and other scientists. Without belittling the importance and fundamentality of researches mentioned, there are some aspects outside the field of scientific inquiry, interpretation of which would help solve the complex issue of contents of administrative and legal provisions in the field of management of internal affairs bodies.

The conducted analysis allows concluding that in research in the field of management system of internal affairs bodies prevalent is the position on perception of the category of administrative and legal provisions as an integral part of administrative regulation, which is a set of appropriate administrative and legal forms, means and other legal phenomena. Thus, part of the legal regulation is the administrative and legal provision of forms and methods of management of internal affairs bodies.

Correlation of legal regulation and administrative and legal provision of forms and methods of management of internal affairs bodies is as follows:

1) administrative and legal provision of forms and methods of management of internal affairs bodies is a kind of administrative and legal provisions, which in turn is part of the administrative and legal regulation. Legal regulation includes administrative regulation;

2) the subject of administrative and legal provision of forms and methods of management of internal affairs bodies is narrower in scope than the subject of

legal regulation, because it considers all legal relations, not only forms and methods of militia management;

3) legal regulation and administrative and legal provision of forms and methods of management of internal affairs bodies have special mechanisms, at the same time mechanism of legal regulation is enforced through common tools, techniques and forms; administrative and legal mechanism of provision of forms and methods of management of internal affairs bodies is carried out using only administrative means.

V. Lysenko
Degree Seeking Applicant,
Department of Administrative Law and Procedure,
National Academy of Internal Affairs of Ukraine

NON-GOVERNMENTAL ORGANIZATIONS AS PARTIES OF COOPERATION WITH UKRAINIANS ABROAD

This scientific article deals with the general principles of non-governmental organizations (NGOs) as a subject of cooperation with Ukrainians abroad.

Examining the activities of major NGOs engaged in cooperation with Ukrainians abroad we came to the conclusion on necessity of formation of the Community Center on Cooperation with Ukrainians Abroad, which would have the Community Council to define priorities of its operations and supervise the implementation of programs and specific projects. This center would gather representatives of NGOs of Ukrainian expat communities in various countries.

This center would include the following units: museum of Ukrainian diaspora; press center; library (books, newspapers, video and audio materials); centre for legal assistance for Ukrainians abroad; scientific and analytical research center on issues of diaspora; methodological research and education center; center of the festival and touring activities and more.

The Community Center would have a coordinating role in the collaboration of: 1) public authorities (Ministry of Foreign Affairs of Ukraine, Ministry of Culture of Ukraine, Ministry of Education and Science of Ukraine, the State Committee for Television and Radio Broadcasting of Ukraine, regional and local administrations); 2) non-governmental organizations ("Ukraine-World", Ukrainian World Coordinating Council, Institute for the Ukrainian Diaspora Studies, Shevchenko Scientific Society, "Ukrainian Mutual Aid", "Fourth Wave", etc..) 3) national information and cultural centers in countries with Ukrainian diaspora.

V. Malikov
Candidate of Law Sciences,
Associate Professor at the Department of Administrative,
Criminal Law and Procedure,
International University of Business and Law

ADMINISTRATIVE AND LEGAL REGULATION OF PUBLIC ORDER IN UKRAINE

Article is devoted to the legal regulation of social relations in the field of public order and the disclosure of procedural features of these processes. Also, the paper considers and analyzes the legislation on the legal regulation of public safety. Considering further development of democracy in Ukraine, the rights and freedoms of citizens are inextricably linked with an increase in the efficiency of activity of law enforcement officers who perform a wide range of tasks for the protection of public order, rights and freedoms of citizens, prevention and suppression of crime. The improvement of officers' enforcement activity depends largely on strengthening law and order in the country. "Legal regulation is a prerequisite for democratic organization of social relations, providing a balance of basic freedom and social justice".

The conclusion shows that to fully meet management activities in the field of public order, influence of only one area of law is insufficient. Only a set of regulations of constitutional, administrative, criminal, labor, financial, civil and other areas of law can cover all aspects of public order, public security and combating crime. Thus, regulation of relations in the field of public order should be comprehensive and provide not only temporary resolutions, but also control and supervise the execution of the laws. It should include a system of norms and provide different types of legal liability for non-compliance with the requirements of public order.

V. Melnyk
Research Fellow,
Interdepartmental Scientific and Research Center
for Combating Organized Crime
at the National Security and Defense Council of Ukraine

ESSENCE OF PREVENTIVE ACTIVITY OF MILITIA OFFICER IN VILLAGE

The article analyzes the existing regulations and legal literature about the nature of crime prevention in the village. On the basis of analysis of legal regulation of militia officers' activity of crime prevention in the village, definition of the concept "preventive activity of militia officer in the village" is proposed. The relevance of this topic is determined by the fact that the activities of militia officers should be carried out according to the principles of respect for human rights and freedoms, rule of law, justice and humanism. The main factor that affects the activity of law enforcement officers is public confidence of the villagers, community groups and labor groups, which is provided by close interaction with them during the performance of militia officer's duties in the village. However, not only interaction affects public confidence of the villagers, but also timely prevention and suppression of crimes and misdemeanors, the application of administrative and legal impact on the offenders in accordance with the laws of Ukraine. For this purpose in the administrative district militia officers can check documents identifying the personality of offender or suspect, take measures to arrest and deliver the offender into the public order stations or to city bodies for further decision on the case.

Important role in militiamen's activity plays prevention of crimes and administrative offenses. For example, in terms of clearly established work on prevention of crimes and misdemeanors, their level and dynamics is reduced. It is well known that it is much easier to prevent a crime or administrative offense, than deal with the consequences of such acts.

The article aims to define the essence of preventive activities by the militia in the village.

It is concluded that the preventive work of militiamen in the village is a constant interaction with the public, community, labor groups for timely clarification of the law for law enforcement and positive impact on people who are likely to commit administrative or criminal offenses, persuading them to lead a healthy lifestyle and conduct other work on the principles of legality, humanism, respect for people.

T. Mishchenko
Degree Seeking Applicant,
Law Faculty,
Sumy State University

ON THE QUESTION OF THE LEGAL NATURE OF CORRUPTION AND ORGANIZED CRIME AS COMPLEX SOCIAL HAZARDS

Determining the main directions of the fight against organized crime accompanied by corruption at the present stage of development of the state and society, we must remember that these two socially dangerous phenomena are consequences, not the causes of problems in reforming the country's economy. Search for the most effective ways to overcome them should be based on improvement of state legislation and state regulation of economic life. The fight against corruption must be especially constant. Major efforts should be directed at the prevention of corruption with regard to requirements of the present time and forecasts for the near future. Attention should be paid to elimination of the causes and conditions of corruption in Ukraine, rather than prosecution of corrupt officials. A successful fight against corruption and organized crime in these conditions is impossible without increasing repressive measures related to the establishment of criminal responsibility for acts of corruption, without activation of militia bodies' work with early detection of offenses and their punishment. Today scientists put first economic (incentive) methods to combat corruption, which are basically manifested in reduction of the preconditions giving rise to corruption through implementation of economic and social reforms, putting administrative method on the back burner, which, in our opinion, greatly distorts the understanding of both the effects and purpose of combating it.

Indeed, the most effective way to fight corruption is to eliminate preconditions and reasons (mainly economic) contributing to its emergence and prosperity as quickly and effectively as possible. This requires serious economic, political and other reforms that need considerable time and expense. At the same time, in combating these dangerous phenomena, this does not exclude the possibility of use of administrative methods that do not require significant costs.

O. Poliakova
Candidate of Law Sciences,
Associate Professor at the Department of Military Law,
Yaroslav Mudryi National Law University

ADMINISTRATIVE RESPONSIBILITY OF THE ARMED FORCES OF UKRAINE

The Code of Ukraine on Administrative Offences, which governs the liability of military personnel and other persons who are subject to the disciplinary regulations for administrative offences, provides that military servicemen, ones obliged for military services and reservists during their training duty, as well as privates and officers of the State Criminal and Executive Service of Ukraine, bodies of internal affairs, civil protection service and the State Service for Special Communications and Information Protection of Ukraine are responsible for the administrative offence under the disciplinary regulations.

Thus, the Disciplinary Regulations of the Armed Forces of Ukraine provide that soldiers bear disciplinary liability for committing administrative offences, except for the cases stipulated by the Code of Ukraine on Administrative Offences.

These acts do not establish clear boundaries between administrative and disciplinary responsibility and a specific penalty for a separate administrative offence. Disciplinary regulations of the Armed Forces of Ukraine are only a list of penalties, one of which a specific authorized subject may apply at its own discretion to the offender.

This position is too arbitrary and may be biased when assigning penalties. Attempt to find the answer to the question, what administrative offence according to the Disciplinary Regulations of the Armed Forces of Ukraine entail responsibility of servicemen, is viewed vain, because this document does not contain such provisions. A general clause stating that soldiers shall be subject to disciplinary liability for committing administrative violations does not give a clear answer.

Summarizing the proposed, article should first of all state that the issues of administrative responsibility of the Armed Forces of Ukraine are regulated by the Code of Ukraine on Administrative Offences and the Disciplinary Regulations of the Armed Forces of Ukraine. The Code of Ukraine on Administrative Offences contains a provision on administrative liability of servicemen for violations on a general basis and norm, which refer to the Disciplinary Regulations of the Armed Forces of Ukraine on bringing to administrative responsibility. In our opinion, the last one is either unnecessary, because the Disciplinary Regulations of the Armed Forces of Ukraine do not regulate administrative offences and administrative responsibility, or needs to bring the rules into compliance with the Code of Ukraine on Administrative Offences. Prospects for further author's research in this direction will focus on deepening the study of the regulation of administrative responsibility of the Armed Forces of Ukraine.

A. Pravdiuk
Candidate of Law Sciences,
Associate Professor at the Law Department,
Vinnytsia National Agrarian University

ADMINISTRATIVE SERVICES IN THE FIELD OF ALTERNATIVE ENERGY SOURCES

This paper investigates the scientific and regulatory approaches to understanding the concept of "administrative services in the field of alternative energy sources" and their classification. It is defined that administrative service in the sphere of production of alternative sources of energy is the activity of the subject of management in relevant area provided according to statements of natural or legal person and aimed at acquisition, substitution or suspension of rights and obligations of such person in accordance with legislation. Relevance of this study lies in the fact that in today's European integration processes taking place in Ukraine and worldwide globalization administrative service is very important in the production of alternative energy sources and plays an important role in terms of licensing procedures, such as filing documents and interaction of various government interfaces – constituents of procedure.

Approaches to the explanation of basic concepts in the field of administrative services are not unmistakable and regular. The views of scientists on understanding the concept of "administrative service" have changed. The term "administrative services" and "management services" were identified at first using the category of "management services".

Purpose of the paper is a comprehensive study of basic normative approaches to understanding the concept of administrative services in the field of alternative energy sources.

N. Puzyrna
Candidate of Law Sciences,
Associate Professor at the Department of Civil Law,
Chernihiv Ukrainian-Russian Institute (branch)
of Moscow State University of Mechanical Engineering

STATE OF LEGAL SUPPORT OF ADMINISTRATIVE AND LEGAL BASES OF OMBUDSMAN'S ACTIVITY IN UKRAINE

The article is devoted to the general standard bases of ombudsman's activity in Ukraine, in particular, to the analysis of a system of the existing Ukrainian legislation in this sphere. Powers of the ombudsman in Ukraine, his basic rights, duties and guaranties of activity are considered. Special attention is paid to the questions of administrative and legal bases of ombudsman's activity in Ukraine.

The author notes that the legislative regulation of activity of Ukrainian ombudsman for today includes the Constitution of Ukraine, the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights", and other regulations.

The analysis of provisions of the Constitution allows drawing a conclusion about existence of the general legal grounds for functioning of this institute in Ukraine, however from positions of administrative legal support of such regulation it is obviously not enough. The Constitution of Ukraine defines only a field of activity of the specified institute. Thus it does not define ombudsman's place in a system of authorities and character of their relations, which certainly negatively influences its general legal status.

The analysis of regulatory acts, which to some extent concern institute of ombudsman, testifies complexity of its legal support. The basic law (the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights"), which defines the sphere of the relations connected with protection of human rights through functioning of institute of ombudsman, has administrative and legal nature. The author comes to the conclusion, proceeding from its contents, that the main purpose of this Law is not the definition of the basics of parliamentary control, but first of all the formation of organizational prerequisites of ombudsman's activity in Ukraine. The other entire legislative massif has nature of passive legal influence and indirectly concerns activity of the ombudsman. Subordinate legal regulations of functioning of this institute are not numerous and concern material and financial security. Ombudsman's regulative and administrative activity aims at internal organization of activity.

O. Punda
Candidate of Law Sciences,
Deputy Director for Research,
State Research Institute of Customs Affairs
E. Moldovan
Candidate of State Administration Sciences,
Senior Research Scholar at the Department
for Research of Legal Issues of Customs Affairs,
State Research Institute of Customs Affairs
V. Zhdanova
Research Scholar at the Department
for Research of Legal Issues of Customs Affairs,
State Research Institute of Customs Affairs

CUSTOMS ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS: THE EXPERIENCE OF THE EUROPEAN UNION

This article provides a comparative analysis of legislation on protection of intellectual property rights of the EU and the Customs Code of Ukraine in compliance with the latest EU standards. It is found, that the customs legislation of Ukraine at the present stage of European integration of our country does not need any changes in order to adapt and harmonize it with EU legislation regarding the enforcement of intellectual property rights. As shown by our comparative analysis of Regulation of 22.07.2003, Regulation of 06.12.2013 and the Customs Code of Ukraine, the Customs Code now is much more in line with the current Regulation of 12.06.2013, than with the ones that have already expired. This can be explained by foresight and professionalism of authors of the Customs Code of Ukraine.

Besides, ways of improving the Customs Code of Ukraine towards its harmonization with EU legislation are proposed. They are: 1) to amend the Customs Code of Ukraine in respect of customs regimes: a) removing the concept of "regime" and replacing it with the concept of "procedure", b) removing from the list of regimes (procedures), in which counterfeit goods can be placed, the provisions of demolition and leaving only the provisions on the procedure for destruction; 2) consolidate law principle of "tacit consent" for the owner's consent to destruction of goods that violate intellectual property right as fundamental principle in the relationship between the customs authorities and the owner of such goods; 3) to add into the Customs Code of Ukraine a norm on a simplified procedure for destruction of goods that violate intellectual property rights, which are sent by mail (courier) traffic.

O. Radchenko
Court Session Secretary,
Zhytomyr Regional Commercial Court,
Postgraduate Student,
Law Department,
Kyiv National University of Trade and Economics

ELEMENTS OF CONTENT OF ADMINISTRATIVE AND LEGAL REGIME PROTECTING RIGHTS OF CONSUMERS OF FINANCIAL SERVICES

The rapid development of financial markets and innovative technologies, the emergence of financial service providers, activities of which are not regulated or insufficiently regulated, can increase the risk of fraud, abuse and illegal acts towards consumers. Consumers' long-term confidence and trust in the financial services market contribute to efficiency and financial stability of the state.

In view of these problems, it is necessary to strengthen the protection of consumers of financial services and integrate it with other provisions of state policy in relation to greater access to financial services and administrative and legal regime protecting the rights of consumers of financial services enshrined in law.

The purpose of this article is to study the content and elements of administrative and legal regime protecting the rights of consumers of financial services.

Based on the defined theoretical developments, we believe that the current regime of consumer protection is multilevel, which is why in the defined administrative and legal regime it seems necessary to single out administrative and legal regime protecting rights of consumers of financial services.

After all, governmental regulation and supervision of financial market need to ensure predetermined financial and socio-economic stability by establishing functional administrative and legal regime protecting the rights and interests of consumers of financial services.

After analyzing and summarizing various academic positions and legal literature concerning elements of administrative and legal regime, we believe that the structure of administrative and legal regime protecting the rights of consumers of financial services include items such as subjects for the operation of the regime; law that shall govern their activities; objects (the rights and interests of the consumer), the principles of protection of consumers of financial services, means and methods of legal regulation, administrative coercion in case of violations, etc.

Conducting the analysis of elements of the administrative and legal regime protecting rights of consumers of financial services, we come to the conclusion, that the administrative and legal regime protecting rights of consumers of financial services operates in the administrative and legal field protecting rights of consumers of financial services, the purpose of which is to ensure consumers' safety in the state, which is provided by normative and legal acts and regulated by the bodies of public

administration, activity of which is aimed at prevention, detection and determination of actions, which violate rights and interests of consumers of financial services, and also application of measures of administrative coercion to the offenders. The content of this regime is realized through the structure of elements which provide its effective functioning.

At the same time, for the purpose of European integration and harmonization, Ukraine should consider adopting appropriate legislative and regulatory acts aimed at creating an effective system of administrative and legal framework for protecting the rights of consumers of financial services in line with international requirements and recommendations.

A. Rusetskyi
Candidate of Law Sciences,
Associate Professor at the Department of Administrative,
Criminal Law and Procedure,
International University of Business and Law

PECULIARITIES OF CASES ON BRINGING LEGAL PERSONS TO ADMINISTRATIVE RESPONSIBILITY

Article aims to determine the characteristics of cases on bringing legal persons to administrative responsibility, as well as to determine the appropriate procedure of its review. The topic is relevant because of the fact that the main task of Ukraine as a democratic, legal and social state is to ensure law and order in the state by preventing infringements of national law and to restore violated rights. To this end, the state apparatus includes coercive apparatus, which allows authorized persons (bodies) apply to the offender individual penalties as elements of responsibility. One of the types of responsibility is administrative one. Its name determines relations which it regulates – administrative and legal.

Purpose of this article is to outline the peculiarities of the case of bringing legal persons to administrative responsibility. Administrative responsibility is a measure of response of the state to administrative violations of individuals. This category of violations can be committed both by physical and legal persons. However, bringing the latter to administrative responsibility is characterized by special characteristics. This stipulates the relevance of the chosen topic of research.

It is concluded that the normative regulation of the procedure of bringing legal persons to administrative responsibility is not legally regulated. In this connection the Code of Ukraine on Administrative Offences requires urgent revision. Conducting the revision, the following features of the case in which the offender is a legal person should be taken into account: specificity of subject (legal entity) and its guilt, the need to involve a representative.

O. Skochylias-Pavliv
Candidate of Law Sciences,
Assistant Lecturer at the Department of Administrative and Informational Law,
Institute of Jurisprudence and Psychology,
National University "Lviv Polytechnic"

PUBLIC DISPUTE AS A JUDICIAL MATTER IN THE ADMINISTRATIVE COURTS

The article deals with the examination of public dispute as a judicial matter in the administrative courts.

Scientific elaboration of the concept of a public dispute is very relevant today. Primarily it can be explained by the practical necessity, as, nevertheless this term is used in the current Code of Administrative Procedure of Ukraine, there is no definition of it, and therefore there is no unified understanding of this term. This fact often complicates the process of distinction between administrative and other jurisdictions, leading to difficulties in considering specific administrative matters.

The author states that scientists have no unified definition of the concept of legal dispute and public dispute as well. Having analyzed the opinions of scientists on the concepts and essential features of a public legal dispute, the author concludes that there are two main positions on this issue in the legal literature. According to the first position an important feature of public disputes is a special subject composition. Consideration and resolution of public disputes is assigned to administrative courts, where one party in controversy is physical or legal entity, and the second – the authorities, local governments, their officials or officers, or other subjects of public authority exercising their administrative functions on the basis of legislation, including delegated powers. The second group of scholars states that to recognize a public dispute among other disputes, not only the subjects of relationships, but also the nature of relations of which it arose should be taken into account. The dispute is public if rights, freedoms, interests, duties, powers implemented in public relations are disputed.

It should be mentioned that discussions among scholars about terminological definition of disputes between physical or legal entities and public authorities are baseless. However, the Code of Administrative Procedure of Ukraine should not contain ambiguous provisions. The author states that the second part of the Article 4 of the Code of Administrative Procedure of Ukraine should be clarified by specifying that the jurisdiction of administrative courts extends to all public disputes except public disputes (not just disputes as defined in the Code of Administrative Procedure of Ukraine) which have other judicial procedure established by the law.

A. Skrypniuk
Degree Seeking Applicant,
Department of Constitutional,
Administrative and Financial Law,
Open International University of Human Development "Ukraine"

SOCIAL AND LEGAL PROTECTION OF PROSECUTORS

The paper describes the main areas of social and legal protection of the legal status for prosecutors. General and special measures of protection, social benefits and pension for prosecutors are analyzed. The relevance of this theme is reflected in the fact that prosecutor's office currently performs a mixed role, acting as support for official prosecution in court, control and supervision over the observance of laws. The prosecutor's office is one of the government bodies, function of which is closely related to the analysis and organization of procedure of rule of law and order in the criminal justice system. Given the increasing risk for prosecutors in course of implementation of their functions in light of recent events, reformation of the entire system in accordance with the recommendations of the Council of Europe, arises the question of change and review of the legal status of the prosecutor's office as well as logical observations on the improvement of social and legal protection of prosecutors.

Purpose of this article is to review and analyze the current legislation on the legal and social protection of prosecutors; develop proposals, theoretical and methodological basis for improvement of the prosecutor's office agencies and transformation of legal status of prosecutors. In our opinion, the definition of legal status of the prosecutor's office as a subject of special purpose requires clarification, which determines the need for further study and improvement. Recommendation Rec (2000) 19 adopted by the Committee of Ministers of the Council of Europe presents the definition of the prosecutor's office as public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system..

Prosecution performs specific functions occupying a special place in the criminal justice system. Therefore the legal status of the prosecution is slightly different from the others.

Findings, developed in this paper, confirm that today, in our view, it is necessary to elaborate the concept of development of public prosecution, based on three strategic directions of improvement of service of prosecutors. The first direction – improvement of rights and duties of prosecutors regulatory assigned and updated in accordance with the requirements of the Council of Europe. Second – establishment of clear criteria for differentiation of types of legal liability, depending on the offense: administrative or criminal punishment. Third – guaranties of activities of prosecutors, which form a complex social and legal support for the activities of prosecutors.

Y. Sobol
Candidate of Law Sciences, Associate Professor,
Doctoral Candidate,
Classical Private University

ADMINISTRATIVE AND LEGAL FRAMEWORK OF INTERACTION BETWEEN NON-GOVERNMENTAL ORGANIZATIONS OF DISABLED PEOPLE AND PUBLIC ADMINISTRATION TO IMPLEMENT AND PROTECT THE RIGHTS AND FREEDOMS OF PERSONS WITH DISABILITIES

The article is devoted to the administrative and legal framework of interaction between non-governmental organizations of disabled people and public administration to implement and protect the rights and freedoms of persons with disabilities. It is indicated that it is expedient to adopt the special statute and specify certain organizational and legal bases of formation and functioning of non-governmental organizations of disabled persons, define areas of joint activities with business and public administration by government guarantees of their activity and enshrine it in the Law of Ukraine "On the Principles of Social Protection of Disabled People in Ukraine". The specific features of public organizations of disabled persons are determined: a) outlined legal abilities of non-governmental organizations of disabled people in the field of property relations enshrined in terms of legal faculty and legal capacity are much wider than those of the other types of non-profit organizations (right for tax benefits, loans, donations, grants, etc.) b) the availability of additional guaranties from the government against possible abuses of their rights; c) public administration is obliged to assist and support the activities of non-governmental organizations of disabled persons; d) non-governmental organizations of disabled persons are involved in the coordination of the activities of the individual subjects of public administration; e) companies that employ disabled people in order to obtain the above mentioned benefits are required to create special workplaces for persons with disabilities, taking into account their individual functional abilities; f) for companies of non-governmental organizations of disabled people must be established an individual procedure of granting permission for the use of tax benefits; g) non-governmental organizations participate in process of approval of construction documents, appraisal of special workplaces for disabled people etc.

As a result, we propose the adoption of the Law of Ukraine "On Non-Governmental Organizations of Disabled People in Ukraine" and establishment of the National Council on Rights and Freedoms of Disabled People.

A. Titko
Research Scholar,
Department of Organization of Research Work
with Non-Permanent Personnel of Internal Affairs Bodies,
National Academy of Internal Affairs of Ukraine

CORRUPTION OFFENSES: LEGAL AND ADMINISTRATIVE ASPECT

The article discusses and differentiates the concepts of "corruption", "administrative corruption offenses" and their features. The basic elements of an administrative corruption offense are determined. Legal and social aspects of corruption are analyzed. Relevance of the topic is determined by the fact that corruption at all times was a major challenge of social, economic, political, moral and aesthetic character. Corruption phenomenon completely covers all spheres of life, and this detriments the development of democracy in Ukraine, making it a backward state with archaic remnants devoid of even a hint of a just civil society with a transparent mechanism of state power. According to the latest figures of Corruption Perception Index in the world according to the prevalence of corruption in the public sector Ukraine is ranked 144th among 175 countries sharing this place with the Central African Republic, Cameroon, Iran, Nigeria, Papua New Guinea, which is a telltale sign of the place of Ukraine in the world community. Therefore today it is important to develop a coherent plan of actions for preventing and combating corruption offenses. In order to overcome corruption, Ukraine should implement consistent organizational planning activities based on the methodology of systematic approach. In this case, it seems appropriate to mention the words of Wiener: "The system can be counteracted only by the other system, but of a higher organizational level".

The purpose of the article is to draw a line between definitions of "corruption", "corruption offense" and "administrative corruption offense", to highlight the main features and elements of administrative corruption offense.

S. Tryhubenko
Candidate of Law Sciences,
Associate Professor at the Department of Administrative,
Criminal Law and Procedure,
International University of Business and Law

STRUCTURE AND TASKS OF THE MINISTRY OF AGRARIAN POLICY AND FOOD OF UKRAINE UNDER REFORM

This article is devoted to the peculiarities of the structure and tasks of the Ministry of Agrarian Policy and Food of Ukraine under reform and consideration of the dynamics of changes in its management system. Scientific studies in this area are quite significant contribution to the study of problems of administrative and legal support of the Ministry of Agrarian Policy and Food of Ukraine. The purpose of this article is to consider the structure and tasks of the structural units of the Ministry of Agrarian Policy and Food of Ukraine. Relevance of the article is reflected in the need to determine the structure and objectives of the structural units of the Ministry under reformation. The Ministry of Agrarian Policy of Ukraine is headed by the Minister of Agrarian Policy and Food of Ukraine, who is appointed by the Prime Minister of Ukraine and dismissed by the President of Ukraine. The Minister has First Deputy Minister and Deputy Minister – chief of staff, who shall be appointed by the Prime Minister of Ukraine and dismissed by the President of Ukraine. In case of necessity to ensure the implementation of particular tasks within Agrarian Policy of Ukraine, the President of Ukraine may introduce the post of Deputy Minister in the structure of the Ministry of Agrarian Policy of Ukraine. Duties of Deputy Ministers and the distribution of powers between the Ministers are determined. Deputy Minister is chief of staff, who manages the activities of staff of the Ministry of Agrarian Policy of Ukraine, appoints and dismisses public servants and employees of the Ministry of Agrarian Policy of Ukraine.

It is concluded that the rapid growth in demand for food in the world opens huge geopolitical perspective for Ukraine – a country with strong agricultural potential. However, to take advantage of it, Ukrainian authorities, including the Ministry of Agrarian Policy and Food of Ukraine, have to create conditions for attracting respectable investments in agroindustrial complex, and introduce new technologies.

V. Udiak
Postgraduate Student,
Department of Finance Law,
National University of State Tax Service of Ukraine

FEATURES OF COMPETENCE OF FISCAL AUTHORITIES IN FOREIGN COUNTRIES IN THE IMPLEMENTATION OF TAX POLICY

In today's conditions in Ukraine continues to take place the administrative reform, which keeps away from the tax authorities. In fact, today there is a need to set up such a fiscal authority, which, on the one hand, will be the most effective in terms of ensuring the stability of revenues to the budgets of all levels, on the other hand, will prevent "traditional" for our country duplication of functions and responsibilities in the implementation of the tax policy. However, the specified reform cannot be effectively implemented without a detailed study of the features of fiscal competence of foreign countries (including Canada, the Italian Republic, the United States of America, the French Republic, the Kingdom of Sweden) in the implementation of tax policy. After all, the best foreign experience can be adapted to local realities, and used in practice by fiscal authorities in Ukraine.

Studying the features of competence of fiscal authorities in foreign countries in the implementation of tax policy, we came to conclusions about the feasibility of using best practices in reforming the fiscal authorities in Ukraine. In particular, deserve attention: the experience of attributing non-fiscal responsibilities to the competence of fiscal authorities; the experience of relationships of taxpayers with tax authorities based on customer relations; the experience of structuring the tax authorities according to their functions; the experience of the activity of the specialized police units (tax police) within the internal affairs bodies and others.

The study of features of competence of fiscal authorities in foreign countries in the implementation of tax policy can in the future have a significant impact on improving the efficiency of fiscal authorities in Ukraine. However, we should remember, that the reform of fiscal authorities in our country should not be a "blind" copy of the experience of individual countries, because it is impossible to impose elements of the legal system of any country in our reality. The adaptation of foreign innovations to local realities should take into account national specificity of state building, the level of development of legal culture and national mentality, which are unique in their own way.

A. Chvaliuk
Candidate of Law Sciences,
Associate Professor at the Department of Administrative and Legal Disciplines,
Donetsk University of Economics and Law

PROBLEMS OF BRINGING THE SUBJECTS OF THE BUDGETING TO RESPONSIBILITY DURING THE FORMATION OF THE STATE BUDGET OF UKRAINE

In his article "Problems of Bringing the Subjects of the Budgeting to Responsibility during the Formation of the State Budget of Ukraine" A. Chvaliuk examines the theoretical grounds of bringing the subjects of the budgeting to responsibility for offenses committed during the formation of the State Budget of Ukraine.

The task of the modern financial and legal science should include development of the ways to legislatively simplify the standards that provide a procedure of bringing to responsibility for violations of the budget legislation, which will allow to apply the sanctions more effectively, to promote the observance of fiscal discipline and conduct of fiscal policy in the state.

In the course of the study it was found that, in accordance with applicable law, criminal or administrative liability of the subjects of budgeting during the formation of the state budget of Ukraine is impossible (although some attempts to introduce the measures of criminal liability for legal persons were made in early 2013, when the Cabinet of Ministers of Ukraine introduced a bill № 2032). In fact, we can only speak about the disciplinary responsibility of those legal persons.

It is therefore proposed to intensify efforts to prohibit the use of non-parliamentary methods of struggle in the Verkhovna Rada, because these methods paralyze the work of Parliament and make it impossible to adopt laws, especially those that are subject to a clear timetable for the adoption, such as the Law of Ukraine "On State Budget of Ukraine". Until the Code of Parliamentary Ethics is adopted and the people's representatives are provided with real penalties for its violation, the situation for brining to responsibility the subjects of the budgeting will remain unsolved.

The problem of responsibility for violation of the legal procedure during the formation of the State Budget of Ukraine is complicated by some uncertainty in the general theory of legal responsibility. Legal doctrine in the field of responsibility for budget violations is also theoretically unjustified as for today. Aspects of joint and several responsibility and the responsibility of public authorities in general are absolutely undeveloped.

Feature of the development and for-

mation of the State Budget of Ukraine is the presence of a clear and dominant competence in this field of the Minister of Finance and the relevant Ministry, the Cabinet of Ministers of Ukraine as a whole, the Budget Committee and other bodies of the Verkhovna Rada of Ukraine as a whole. Therefore, effective penalties for violation of legislation on the formation of the State Budget of Ukraine should be, above all, constitutional, legal and political.

A. Chubenko
Doctor of Law Sciences, Senior Research Scholar,
Professor at the Department of Economic and Legal Disciplines,
National Academy of Internal Affairs of Ukraine

ORGANIZATIONAL AND LEGAL PRINCIPLES OF FUNCTIONING OF THE SYSTEM OF CIVIL PROTECTION IN CONDITIONS OF THE ANTITERRORIST OPERATION

This article analyzes the legal organizational problems of increasing the effectiveness of civil protection in Ukraine, taking into account the specifics of its implementation in terms of the antiterrorist operation. We investigate the state of the legal regulation of civil protection, the issue of co-ordination in this area. The relevance of this paper is determined by the fact that available in the Ukraine national security system as a whole meets the requirements facing the country in the early years of independence. However, the nature of the security environment, which was formed in early 2014 due to a significant expansion of the range of challenges and threats, impose new requirements of the national security of Ukraine, the need to improve it and rethink strategic priorities. There is also an urgent need to review and clarify the tasks of civil protection, its rapid reorientation to perform tasks in terms of the antiterrorist operation. Also a goal of Ukraine's security sector is creation of an effective system to ensure implementation of measures concerning the formation and implementation of public policy in the areas of national security of Ukraine, development of components of the security and defence of Ukraine on the basis of national security policy in a single complex, combining a unique system of strategic planning and crisis management, taking measures to create a favorable security environment around and within Ukraine, creation of an effective mechanism for timely adjustment of priorities of security policy, integration of capabilities of all components of the security and defense sector of Ukraine in order to resolve the current crisis and eliminate

threats. An important area of national security is implementation of the function of civil protection.

As a conclusion, it is recommended to develop draft legal acts amending the law on the distribution of powers and responsibilities between central and local executive authorities, local self-government in terms of their participation in the implementation of the state policy on protecting the population and areas. It is possible to complete the transfer of certain functions of civil protection to local authorities with simultaneous consolidation of relevant sources of revenue, which will help eliminate duplication in funding from the budgets of different levels.

S. Yurko
Lecturer,
Cherkasy Branch,
National University "Odessa Law Academy"

THE PRIVATE POLICE

The legal nature of policing is changing. In the modern world there is a clear trend to transfer some law enforcement functions to non-governmental institutions. The private security industry already employs significantly more guards, patrol personnel, and detectives than federal, state and local governments combined, and the disparity is growing. Some scholars argue that non-governmental law enforcement institutions are a legal anomaly, while others see this as trend in the development of civil society.

Throughout English and American history the distinction between public and private policing has been blurred. The emergence of state-controlled law enforcement, particularly in England, grew out of private organizations that were established to maintain public order. Non-government police could have different forms in modern world such as the specialized railroad police, mall security or community police service of universities. Company Police patrol and enforce the law and provide the same services within territorial jurisdiction as municipal law enforcement officers do. Police in the U.S. can be compared with public health system: the state provides a minimum, and if you need higher quality services you should refer to a private firm.

CIVIL AND ECONOMIC LAW AND PROCEDURE

Y. Bilousov
Candidate of Law Sciences,
Associate Professor at the Department of International Law,
Yaroslav Mudryi National Law University

SOME ASPECTS OF THE LEGAL CONTENT OF INNOVATIONS

The article is devoted to the problem of some aspects of the legal content of innovations and their place in the legislation. Initial legal position regarding the definition of "innovation" in the context of legislative support is analyzed. Value of innovation and innovative areas of economic security is investigated. Attention is paid to the methodological and terminological provisions of economic and legal sciences.

In the course of research on the problem of legal content of innovations and their place in the legislative sphere, the attention should be paid primarily to the fact that as the final result of scientific and technological activities innovation appears the only product, legal content of which is revealed through the category of things.

Instead Ukrainian legislator does not distinguish and does not specify the components of innovation.

The concept of innovation is closely related to such a legal category as innovative activity, which is treated differently in legal science. However, it is based on an understanding of innovation as a complex consecutive process of the generation of idea (innovation constituent component) for its specific implementation and further use (material component).

A special actualization in the context of the study of interconnections between economic security of the state and innovation processes gets problem of definition of state innovative policy and means of its support. It can also be viewed in two ways, in terms of economic and legal science and in terms of science of public administration.

Analyzing given definitions, we should pay attention to the fact that scientists suggest that there are two systems: management system of innovative processes in the form of government authorities, and managed system – innovative processes or innovative relations, which collectively can create, and then introduce innovative products.

The researcher sets legal action in the first place because the legal framework of operation is determinant for any social relations, including relations in the field of innovations.

In the context of correlation of innovation and innovative areas of economic security of the state, methodological and terminological problem of providing economic and legal sciences takes an important place. Ukraine, proclaiming innovative way of development of the economy as a whole, needs real actions for its implementation.

R. Hrynko
Degree Seeking Applicant,
Department of Civil Law and Procedure,
Khmelnytskyi University of Management and Law

MEASURES OF OPERATIONAL IMPACT AND METHODS OF SELF-DEFENCE: A COMPARATIVE LEGAL ANALYSIS

The article is devoted to the common features and differences between the measures of operational impact and ways of self-defence.

It is noted that in the legal literature there are two theories on correlation of operational impact and the methods of self-defence. Proponents of the first theory believe that the methods of self-defence and measures of operational impact are independent ways to protect civil rights and interests. According to the second theory, the operational impact activities are seen as a kind of methods of self-defence.

The article reveals the following common features of measures of operational impact and methods of self-defence: 1) taken in case of violation of a subjective right or a real danger of such violation; 2) taken independently and unilaterally, without recourse to a court or other body protecting civil rights; 3) the possibility of their implementation must be provided by law or contract; 4) actions are legal and factual; 5) perform remedial function, and in cases provided for by law or contract function of enforcement of obligation; 6) can cause the occurrence of unfavorable effects of material nature.

The author sees the main difference between the measures of operational impact and means of self-defence in the fact that the application of the operational impact is limited to contractual obligations.

It is concluded that measures of operational impact are kind of methods of self-defence, as they are characterized by a number of common features. At the same time, the fact that measures of operational impact cover only violations or threats of breach of contractual obligations evidences their characteristic features, which allows considering them as an independent means of self-defence.

O. Izbash
Candidate of Law Sciences,
Associate Professor at the Department of Civil and Labour Law,
Odessa National Maritime Academy

INTERNATIONAL ASPECTS OF THE FIGHT AGAINST INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS

With globalization, the offenses in the sphere of intellectual property acquired an international character. They occur in large numbers in all parts of the world. To successfully resist them, states need to work together. Common to every country law enforcement problem also leads to the need for international cooperation.

To date, there are different ways and measures to combat piracy and other violations of intellectual property rights, in particular: the imposition of international sanctions against the offender, blocking sites that contain information or content that violates the rights of authors or copyright holders and so on. However, the practice in most countries with a high level of protection of intellectual property indicates that some civil penalties can not eradicate piracy.

In general, there are many factors that negatively affect the system of international cooperation on intellectual property issues: the gap between countries in the level of economic development; cultural, religious and ideological differences; differences in the legal systems of intellectual property protection; mutual accusations of non-compliance with the rules of intellectual property protection, the use of such accusations for political purposes; skepticism about the intellectual property institute. However, if desired, these factors can be overcome: it is proved by a positive experience of international cooperation on the protection of intellectual property.

O. Kulishenko
Postgraduate Student,
Department of History of State and Law,
Taras Shevchenko National University of Kyiv

PROPERTY RIGHT AND OWNERSHIP IN HETMAN UKRAINE: CHARACTERISTICS OF THE CONCEPT

The problem of property rights and ownership of the land during the Hetman times in Ukraine is one of the most controversial issues in contemporary historical and legal science. At present, scientists do not come to a single conclusion whether there was private property right during this period.

Today Ukrainian scholars who study the history of land rights in Ukraine of the Hetmanate times have two polarized opinions. The first ones defend the position that there was no private property right relating to land and there was only ownership. Thus, A. Shevchenko states on this subject that "... the land and everything, that grows or situates on it natural way, can not be privately owned".

In turn, other scholars M. Domashenko and V. Rubanyk support contrary opinion defending the existence of the private property right relating to land during Hetmanate, stating that even the Cossacks had it. In this connection, the researchers note that "completeness, unlimitedness (except for duty to possess weapons, equipment at one's own expense and to perform military service) and hereditariness of Cossacks' land property gave more reasons for classifying it as private property, because significant differences in the legal status of Cossacks' lands and lands of noble hardly were not observed.

As we believe, the main reason for the above discussion lies primarily in the complexity of the concept – the categorical definition of private property rights and land ownership. In fact, based on archival materials we have, it is seen that often in contemporary law-making practice these concepts are confused, even identified. Legislative and legal system disorder during Hetmanate should be also kept in mind. As a result, the available sources allows us concluding that throughout history of the Hetmanate, there existed two forms of land rights, namely private property right which was a reflection of this right interpreted by Roman jurists as sacred and inviolable possession; and ownership of land, which was actually a creation of Ukrainian national mental, cultural and legal traditions.

In addition, the exercise of private property right relating to land during Hetman times had ranking character.

A. Olefir,
Candidate of Law Sciences,
Assistant Lecturer at the Department of Private Law,
Poltava Law Institute,
Yaroslav Mudryi National Law University

ECONOMIC AND LEGAL CONSEQUENCES OF PERFORMANCE OF ASSOCIATION AGREEMENT WITH THE EU FOR UKRAINE

A detailed analysis of the economic content of the Association Agreement between Ukraine and the EU is carried out. General and specific economic and legal consequences of signing it are determined. In particular, attention should be paid to the following: increased competition in the domestic market and therefore the dependence on import; outflow of domestic investments; control over key national assets by foreign entities; some minimization of corruption; sovereign economic and legal mechanism loses the flexibility necessary for complex and multifunctional regulation of economic relations; unequal distribution of mutual obligations between Ukraine as a developing country and developed countries, when Ukraine obliges to adapt national legislation not only to the current EU law, but also to its amendments in the future, and so on.

Thus, the main issue on the parliamentary agenda of Eastern European countries, not only during the early years of approximation to EU rules, but even now is the implementation of these rules into the form of national laws.

Despite a number of positive effects that materialize in case of implementation of an effective national economic policy, in the Association Agreement interests of one party are guaranteed to the maximum, imposing no obligations to change domestic legislation in the interest of the counterparty. There is no objection to the fact of delegating a substantial share of the state sovereignty to EU institutions in key areas of the national economy, without the ability to influence the economic policies and the assigning to Ukraine the function of secondary law-making. For example, the Agreement provides for the establishment of the Subcommittee on Sanitary and Phytosanitary Measures, the main function of which is to monitor the implementation of the relevant provisions of the agreement and study of all matters that may arise in this regard. Without correct conclusions and measures taken to improve the competitiveness of the national economy, the consequences of signing the Association Agreement between Ukraine and the EU are mostly negative. The idea of "achieving prosperity through someone else's efforts" does not reflect reality having no confirming examples (Romania, Bulgaria, Latvia, Estonia did not solve their economic problems via EU membership), especially at the time of investment deficit, which increases the cost of borrowed resources (leads to negative social effects of complete financial dependence), the recession and budget sequestration in the EU.

S. Panova
Degree Seeking Applicant, Advocate,
National University "Odessa Law Academy"

ON EFFICIENCY OF LEGAL MEASURES OF PROTECTION OF ARCHITECTUREAL MONUMENTS

The article is devoted to researches of legal measures of protection of one of the objects of cultural heritage – architectural monuments.

Author pays attention that actuality of research is determined by legal consideration of objects of the real estate – architectural monuments – as part of the objects of civil rights, including private ownership rights.

Loss of authenticness and originality because of unauthorized reconstructions and rebuilding, as a result, leads to the elimination of architectural monuments, and consequently to the irreparable losses in a cultural sphere.

The study of current legislation of Ukraine is carried out in the field of protection of monuments that envisages the measures of criminal, administrative, civil and legal influence on the persons guilty of its violation.

Through examples from judicial practice the author illustrates realization of legal regulations in part of bringing persons guilty of violating legislation on the protection of cultural heritage to criminal, administrative, civil and legal responsibility.

The article shows separate compositions of the criminal and administrative measures directed to the protection of objects of cultural heritage – architectural monuments.

The features of civil and legal provisions for actions or inaction of owner of monument of cultural heritage, which threatens its damage or elimination, are investigated.

Result of such actions can be buying out an architectural monument and official duty to reconstruct the monument of architecture and its territory.

Author draws a conclusion that, in spite of changes in legislation, the conducted analysis of judicial practice testifies a significant variety of violations in the field of protection of architectural monuments.

Author offers to develop the complex of compulsory measures, including economic sanctions, application of which is possible only with the simultaneous increase of the level of consciousness of population, its culture.

O. Syniehubov
Candidate of Law Sciences, Associate Professor,
Associate Professor at the Department of Civil Law and Process,
Faculty of Law and Mass Communications

THE RIGHT OF A CHILD FOR A SAFE AND HEALTHY ENVIRONMENT: LEGAL CHARACTERISTICS AND SPECIFICS OF REALIZATION

Nowadays the rights of a child is an important institution through which their legal status is regulated, the ways and means of influencing them are defined, boundaries of intrusion into child's personal sphere are specified, legal guarantees for the implementation and protection of the rights and freedoms of minors are established. Children certainly participate in civil legal relations, including personal non-property relations, which are expressed in different spheres of life.

Thus, the child's right to a safe and healthy environment belongs to the group of personal non-property rights of the child, which enable its natural existence. In today's life these rights constitute the highest and the most precious individual rights because their object consists of the highest and most precious human goods based on child's interests aimed to secure its existence as a living being and satisfy physical needs.

The purpose of this paper is to carry out a legal analysis of the personal non-property rights of a child to a safe and healthy environment, and identify characteristics of its realization by this social group.

V. Kholod
Candidate of Law Sciences,
Senior Specialist on Legal and Scientific Support
at the Department of Judicial Statistics, Generalization of Judicial Practice, Informational Support, Codification and Reference Work,
Court of Appeal of Odessa Region

SOME ASPECTS OF LEGAL DEFINITION OF LAND LOT AND PERENNIAL PLANTINGS

The article is sanctified to research of legislation that regulates the legal regime of land lot and perennial plantings as objects of civil laws. Positions of civil legal doctrine within the framework of the chosen aspect are analyzed. An author came to the conclusion that a criterion of presence or absence of state registration is not qualificatory for definition of an object of real estate. That is why the author disagrees with opinion of separate scholars, who eliminate possibility of consideration of the perennial plantings as independent objects of the real estate only on the basis of absence of state registration.

On the basis of analysis of doctrine and statutory provisions on the concepts of the perennial planting and land lot, the author draws conclusion that perennial plantings are part of land lot. Such conclusion to a full degree complies with provisions of Articles 181, 187 of the Civil Code of Ukraine which act as a guaranty of protection of rights for a person that acquires a land lot with perennial planting.

Land lot and perennial planting appear to be objects of civil circulation after establishment of borders of land lot and transplantation of perennial planting. Land lot exists as part of earth surface, and perennial planting as nursery transplants. With this in mind, the perennial plantings are not the objects of civil circulation as objects of the real estate. On this basis author comes to the conclusion that rights on the perennial plantings are derivatives from rights on land lot. In such cases the issues on the legal fate of the perennial planting is decided according to procedures envisaged by the Civil Code of Ukraine.

I. Tsilynko
Postgraduate Student,
Department of Civil Procedure,
National University "Odessa Law Academy"

PROBLEM OF DETERMINATION OF THE COMPETENCE OF THE SUPREME COURT OF UKRAINE

Recently, there is an active discussion in juridical literature about the problem of definition of the competence and authority of the Supreme Court of Ukraine and the need to return the authority of court of cassation to its competence. The most scholars and practitioners, who demand the returning authority of court of cassation to the Supreme Court of Ukraine, do not indicate what are fundamental problems or imperfections of present court system of Ukraine, and how proposed changes will affect the process of juridical protection of human rights.

Until creation of separate judicial institutions, cassation appeals and procedure of reviews of court decisions on civil acts were not effective, because of congestion of the Judicial Chamber on civil cases of the Supreme Court of Ukraine, functioning as cassation institution, was not able to observe big number of civil acts, decisions on which were subjects of cassation appeal.

We must also remember that any changes or reorganizations in judicial system should be aimed at improvement of justice system and providing more effective performance of tasks of judicial procedure in general and civil procedure in particular, but not at redistribution of power, creation of new vacancies or changing names of government bodies etc. This means that four-step judicial examination of civil acts will provide the highest efficiency of the civil justice and finality and obligatoriness of adopted judicial acts. Also, it is necessary to support suggestion, which was expressed in juridical literature, about an opportunity for civilians to apply to the Supreme Court of Ukraine for protection on the grounds on unequal application of the same procedural regulation by the court (courts) of cassation.

N. Chuchkova
Candidate of Law Sciences,
Associate Professor at the Department of Private
and Legal Disciplines,
University of Modern Knowledge

THE NOTION OF A FOREIGN LEGAL PERSON: PROBLEMS OF TERMINOLOGY

The essence of the notion "foreign legal person" and some terminological problems connected with this notion are investigated in the article. Based on the results of research, the notion "foreign legal person" was improved, given the basic differences between the notions "foreign legal person", "foreign economic entity" and "foreign company". Imperfections in the legislation of Ukraine were identified and ways to remove them were proposed.

The author proposes to define a foreign legal person as an organization incorporated or otherwise created under the laws other than the laws of Ukraine, and (or) executive body located outside Ukraine.

The article emphasizes the need to distinguish the notions of "foreign legal person", "foreign economic entity" and "foreign company".

Based on the analysis, the author concludes that the term "foreign economic entity" is broader than the term "foreign legal person". There are such main differences between a foreign legal person and a foreign economic entity: firstly, a foreign economic entity includes not only foreign legal person, but also foreign individual entrepreneur; secondly, foreign legal person does not always carry out business as opposed to a foreign economic entity; thirdly, a foreign economic entity as opposed to a foreign legal person may participate only in a business process. A common feature of the studied notions is their foreign nature (in other words, they have a domicile or permanent residence outside Ukraine).

The difference between the foreign company (according to Articles 117, 396 of the Commercial Code of Ukraine) and a foreign legal person is that the foreign company is established under the laws of Ukraine, while the foreign legal person – under the foreign law. Such company is called foreign because property of Ukrainian enterprises is owned by foreigners or foreign legal entities (foreign investors), or if the company has been fully acquired in the property of such persons.

In order to improve the legislation the author proposes a series of amendments and additions to the laws of Ukraine, namely to the Article 123 of the Commercial Procedure Code of Ukraine and 117 of the Commercial Code of Ukraine.

O. Shuryn
Postgraduate Student,
Law Faculty,
Taras Shevchenko National University of Kyiv

PROOFS AND PROVING IN CASES ABOUT RENEWAL ON THE WORK AS A RESULT OF TERMINATION OF THE LABOR CONTRACT ON THE INITIATIVE OF THE EMPLOYER AT SYSTEMATIC FAILURE TO FULFILL LABOR DUTIES BY EMPLOYEE WITHOUT GOOD REASONS

The author emphasizes that one of the main social and economical rights declared in the international legal acts and the Constitution of Ukraine is the right to work. The author states that the procedure of dismissal is defined in the Labor Code of Ukraine. The aim of this article is to acquaint workers with the procedure of dismissal and in such way to decrease amount of groundless discharges from work on the initiative of the employer.

The list of grounds to dismiss the employees is defined in the Labor Code of Ukraine. One of the grounds to discharge the employee from the work is systematic failure to fulfill labor duties by the employee without good reasons. The article states that the procedure of dismissal on the grounds of systematic failure to fulfill labor duties by the employee should be carried out according to the requirements of the Labor Code.

The author also determines steps which the employer must take when he wants to discharge employee from work. The writer also analyzes the authority of the trade union body and specifies the duty of the employer to receive the approval of the trade union.

At the end of the article the author notes that it is very important to inviolately adhere the requirements of the legal acts.

A. Yarysh
Degree Seeking Applicant,
F.H. Burchak Scientific and Research Institute of Private Law and Business,
National Academy of Legal Sciences of Ukraine

LEGAL REGULATION OF CIVIL RELATIONS, THE OBJECT OF WHICH IS INFORMATION

The article analyzes the laws which regulate social relations. The object of these social relations is information.

Legislators have abandoned the right of ownership of information and use a new approach to the regulation of relations, the object of which is information. Analysis of regulatory legal acts cited by the author, made it possible to determine the content of such legal category as the right to information and to explore its features.

At present there is a conflict regarding coverage of information by the rules of institute of ownership in several laws.

It seems appropriate to state that right to information is enshrined in Article 5 of the Law of Ukraine "On Information", and is provided with a tetrad of powers: obtaining, using, distributing, storing and protecting information.

The main results of the study are:

– The right to information consists of such powers as entitlement to use, entitlement to disposition, the entitlement of ownership where entitlement of ownership indicates that information is a subject to the law.

– The term "manager" in the current legislation is used synonymously with the term "holder".

– There is a possibility of transfer of the information from one entity to another.

– The contract may be the ground for the transfer of the right to information.

– There is ability to transfer, the right to information as a whole, as well as separate powers of the right to information.

CONTENTS

THEORY AND HISTORY OF STATE AND LAW; PHILOSOPHY OF LAW

CONSTITUTIONAL AND MUNICIPAL LAW

ADMINISTRATIVE, FINANCIAL, TAX LAW

CIVIL AND ECONOMIC LAW AND PROCEDURE

SCIENTIFIC HERALD
OF INTERNATIONAL HUMANITARIAN UNIVERSITY

SERIES: JURISPRUDENCE

Scientific collection

Published twice a year

Edition 9-2 volume 1, 2014

Series was founded in 2010