Зміст

ПИТАННЯ КРИМІНАЛЬНОГО ПРАВА ТА ПРОЦЕСУ

НА ПОЧАТКУ ТВОРЧОГО ШЛЯХУ

НАУКОВЕ ЖИТТЯ

РЕЦЕНЗІЇ

НАШІ ЮВІЛЯРИ

RABINOVYCH P.

CONSTITUTIONAL STATUS OF HUMAN AND CITIZEN: OPTIMIZATION CAPABILITIES

The article argues the necessity of optimizing the constitutional status of human and citizen rights in Ukraine. To solve the problem Lviv Laboratory of Human and Civil Rights of the Research Institute of State Building and Local Self-Government of Ukraine NALS developed specific regulatory proposals for improving the provisions of more than 60 articles of the current Constitution (primarily, almost all of its articles in Section II), which are set out in published work. Here were used ideas of some of the committee members of the Constitutional Assembly on the rights, freedoms and responsibilities of human and citizen, expressed at its meetings during the 2012-2013 years.

The proposals were developed in the following areas:

- Bringing the Constitution to better comply with international human rights standards (in particular, by including them in the text; it additions by latest ratified international instruments of the United Nations and the Council of Europe; indicating the need to consider the practice of international jurisdictional bodies use of international instruments on human rights);

- When attaching the Constitution all rights and freedoms (especially economic, social, cultural) to include references to the relevant positive obligations of the State to ensure each of them;

- Foundation of possible restrictions on the rights of man and citizen adjusted so that they are not wider than those identified in the international treaties ratified by Ukraine;

- To specify in certain articles of the Constitution the names of carriers (beneficiaries) of certain types of rights, based on socio- anthropic nature of relevant stakeholders in particular, "man", "citizen", "person", "union", etc.

Justified innovations of legal status of various subjects relate, inter alia, to: inalienability, inviolability, inexhaustible fundamental – enshrined in the constitution – rights and freedoms (Article 21); compliance with international

treaties ratified by the Verkhovna Rada of Ukraine, the principles and reasons of restriction of rights and freedoms, the legitimacy of such limitations (Article 22) to life, health and safety (Article 27); liberty and security (Article 29); freedom to express own views (Article 34); peaceful assembly without arms and rallies , marches and demonstrations (Article 39); adequate standard of living for himself and his family, which includes adequate food, clothing, housing (Article 48); full reimbursement by the state or local authorities for material and moral damages caused by unlawful decisions, actions or inaction of public authorities, local governments and their officials and officers in the performance of their duties.

Key words: human rights and freedoms, the obligation, constitutional and legal status of a person, guarantees of the rights and freedoms.

PETRYSHYN O.

THE DEMOCRATIC PRINCIPLES OF LEGAL AND SOCIAL STATE

The article highlighted the most common theoretical foundations of the concept of democracy in the context of the Constitution of Ukraine tasks of developing a legal and social state. Made a brief overview of the main points of discussion of theories of democracy as a historical and political perspective, and from the point of view of modern analysis.

Particular emphasis is placed on the fact that the study of democratic principles of legal, social state provides for an appeal to: 1) national sovereignty and forms of its realization (directly and representative), 2) the ratio of the majority and minority in the exercise of state power, and 3) separation of state and its controllability 4) law and human rights in the work of public authorities.

Particular attention is paid to problems of national sovereignty, the role of representative democracy for the proper organization of power in the modern state. We investigate the issue of national (political) identity of the people as the substance of a democratic state, the issue of separation of powers as a guarantee of

democratic transformation in tyranny, the value of the rule of law and human rights for the realization of democratic principles.

Key words: democratic state popular sovereignty, the forms of democracy, separation of powers, human rights.

YEVGRAFOVA YE.

ISSUE OF TRUTH IN LEGAL SCIENCE AND PRACTICE

The article is devoted to consideration of the most significant theoretical aspects of truth in legal science and practice. The author provides analysis of condition of elaboration of topic as truth in sciences of legal theory and philosophy, critical evaluation of truth characteristic as legal quality (legal norms). It is underlined that as an object of cognition, truth is objective one. Therefore in social and legal reality it is necessary to find (discover) truth, but not to declare it at the discretion of investigators.

Issue of in law (norms) or scientific cognition's movement to it can be completely solved, if this cognition will achieve result which, according to the article, must be incontestable right of cognition. Now it is too early to make conclusion as for serious in elaboration of such topic as truth in scientific science. Today there are certain elaborations concerning this issue. In these elaborations important steps were made on the way of its philosophic and legal understanding of "what is truth in law?" From the point of view of separate scientists, truth in law is one of objective characteristics of legal norm, where its essence and development direction, as well as degree of its ability and form to be reflection of reality, are expressed. It is impossible to agree with such position. Firstly, eventually aim of cognition is establishment of truth which cannot be determined as a characteristic of kaw or its norms. Secondly, it is doubtful to consider truth in law to be a characteristic. We consider that it reflects subjective position concerning its perception. Besides, it is incorrect to refer truth to intellectual part of contents and form in law, since in this case process of its cognition is confused

with the truth. The last one is beyond this process and for some time is unknown for the subject of cognition. Truth is an objective category and is the result of scientific cognition.

The article provides critical analysis of views that truthfulness of legal norms consists in their accordance to state will. Only truthful norms correspond law. Ascording to such position, law consists of at least two typical legal norms: truthful and false. But the first ones. As well as the second ones. Must be executed by all without distinction subjects of legal relations. Incorrectness of this point of view is presented on the examples of current legislation of Ukraine and court practice. While establishment of truth in law it is important to determine how adequate it must be concerning a thing that is recognized in law (laws) as social justice, freedom, equality for each member of society. The essence of social value of is in this fact, as it is underlined in the article. Otherwise, any sense to reveal truth in law (laws) and consider it to be such a value is lost. But, under all circumstances where development of law and state is held, priority pertains to law, as instant implementation of its rule into social life. The author of the article considers truthfulness of ideas of gradual "regression" of law and state. Unlike them, it is emphasized in the article that law and state are significant achievement of human civilization. Therefore, theories or other thoughts concerning their regression and substitution by so-called "bodies and rules of communistic self-government" at least can be referred to some sort of social utopia.

The author of article supports scientific position that humanity does not have another way to solve global problems and complications, which threaten with severe consequences for people, and to put contemporary law into the centre of their life. There is a rhetorical question: does truthfulness in law assignment consist of this?

***Key words*:** truth, right, truthful legal norms, objectiveness, real, false, legal fact.

HAUSTOVA M.

THE PROMBLEMS AND PROSPECTS OF THE DEVELOPMENT OF UKRAINIAN LEGAL SYSTEM UNDER CONDITIONS OF GLOBALIZATION

It is stated in the article that the 21 century is characterized by the further development of the globalization process which is basically an objective phenomenon and has a system nature, i.e. covers all the spheres of the society life. Globalization opens for people the most widespread possibilities and after same time gives rise to problems, the solution of which is main pre-condition of the existence of civilization, such as ensuring of universal peace and security including terrorism, non-proliferation of mass-destruction weapons, ensuring of world economy functioning, environmental protection etc.

It is determined that legal culture is the obligatory condition of waking transformational processes more dynamic and of the formation of legal state and civil society in Ukraine. And such components of legal conscience as language, legal language, language legal conscience and education are also analyzed.

Attention is focused on the fact that the question of gender equality remains very complicated and urgent for Ukraine. Gender equality is a component of the general principle of equality as the basic of the democratic system of powers and societies. Besides, the article emphasis that the main soal of the legal policy in modern Ukraine will be the improvement of the legal control of social relations, the core of which is the most comprehensive ensuring of a persons and citizen's rights and freedoms. The general goal of the legal policy should rely upon such values as life, freedom, justice, security and order and contribute to their incorporation into the legal life of a society. Taking into account the above-mentioned goals the following priorities of the legal policy in Ukraine are determined, namely: the reform of the judicial system, the strengthening of legality, law and order etc.

Globalization has a substantial influence on all subsystems of the legal system of the country.

Under conditions of globalization the range of complex inter- branch structural formations of legislation has greatly increased, the most typical example of which is social legislation, criminal legislation etc.

Besides, under conditions of modern globalization processes new sources of law began to appear, including legal positions of the Constitutional Court of Ukraine, legal custom and business usage, model legislation etc. It was concluded that in modern Ukraine judicial practice at the legislative level appears obligatory by nature and becomes the legal source.

It is determined that the basic of the legal system is ensuring of real rights and freedoms of a man and citizen. Besides, the article has analysed and formulated the definition of such a notion as modernization and also determined the main and trends of legal modernization in our country.

Key words: Globalization, legal system, modernization, legal position, judicial practice, rights of person, legal acculturation, legal policy.

TOMKINA E.

MORALITY'S PRINCIPLE OF STATE AUTHORITY: PROBLEM STATEMENT

The article deals with consideration of basic problems, connected with manifestations of immorality in state authority's activities of Ukraine. The moral aspect of corruption problems and other prevarications are analyzed. In particular, attention is paid to the analysis of the immoral nature of corruption, which is manifested in its violation of the natural laws of social life. First of all, it is the norms of social justice. Despite its various interpretations in different historical periods justice always implied fair distribution of social wealth among people. Otherwise great distrust, resentment, suspicion, hostility, and other negative phenomena arise in society. These things predispose people to act in a manner that would not be used under fair conditions of life. We have to admit that these phenomena are characteristic of modern Ukrainian society today. Separately, the

author dwells on the issue of moral evaluation of public corruption. The data of the latest public opinion polls, are conducted by Ukrainian Centre for Economic and Political Researches. According to their results, political corruption is perceived Ukrainian society as a given. People mostly exhibit «silent resentment» about corrupt practices and are not active subjects of counteract to this phenomenon. Among other immoral abuse of the author also examines police officers abuse of detainees and prisoners in custody. The article gives examples of such treatment. Including relevant facts are mention established by the European institutions. On such occasions during the mass protests in Ukraine in autumn and winter of this year are dealt with separately. It is pointed out that the commission of immoral politicians and officials indicating a lack of standard of morality of the persons authorized to perform state functions .Indicated that their commissions indicate about insufficient level of morality these officials authorized to state duty's execution. Focuses on necessity of strengthening the moral requirements to these officials' and immediate implementations in the political and legal processes of the organization and state power's implementations in Ukraine legal mechanisms to reliable ensuring of morality as a constitutional moral principle of all state institutions.

Key words: corruption, prevarications, politics, state authority, moral qualities, justice, morality, principle.

TATSIY L.

ETHICS OF JUDGE AND THE CHARACTERISTICS OF ITS NORMATIVE REGULATION

In the article the basic stages of formation of judicial ethics are indicated, the principle international standards of judicial ethics and conduct including the relevant case-law of the European court of human rights are expounded. The universal and European international acts regarding ethics and conduct of a judge as well as the extent of their legal obligatoriness and addressees are analyzed. The

features of the normative regulation of judicial ethics requirements at the national level of Ukraine are determined. It's suggested to single out the group of ethic-legal norms as a specific kind of regulators in the system of the social regulation.

Key words: judicial ethics, international standards of judicial ethics and conduct, professional duties of a judge, confidence to the judicial system

KOZACHENKO A.

POWERS OF VOLOST ZEMSTVOS ACCORDING TO "PROVISIONAL REGULATIONS ON VOLOST ZEMSTVO BOARD" OF 1917

The article contains analysis of powers of a volost zemstvo provided by legislation of the Provisional Government of Russia of 1917. Powers of a volost zemstvo were defined by "Temporal Regulations on Volost Zemstvo Administration" dated 21 May 1917. The jurisdiction of a volost zemstvo included affairs of the local economy and management. A vosolt zemstvo was given a status of a legal entity – it could exercise civil transactions, defend its rights in court. It was granted a right to impose a monetary tax on real property within a volost and set fees that ensured its financial independence. Powers of a volost zemstvo included disposal of rural property and cash means, management of zemstvo economic actors, management of educational, health, social and small credit institutions. It was trusted with affairs of sanitary and veterinary control, ensuring public welfare, providing legal aid to the population, supervision of compliance with health and safety, public order and safety. Volost zemstvos were given a right to join unions and associations to carry out business activities. Legislation of the Provisional Government provided a volost zemstvo with executive powers, gave it a number of powers of local administration and significantly weakened an administrative control of the local government.

Province and uyezd zemstvos were granted rights to control activities of volost zemstvo that is not peculiar to local government. Due to the fact that the

legislation of the Provisional Government did not differentiate powers of district and uyezd zemstvos, there were conflicts between them. To differentiate powers of uyezd and volost zemstvos, uyezd zemstvos enacted their own resolutions that were in force on the territory of an uyezd.

According to the publication in the press and archives, volost zemsvos could develop their activities in a short period of time. On the recommendation of the General Directorate of Local Economy of the Provisional Government, heads and members of volost boards regularly participated in meetings of uyezd zemstvo boards to gain experience, volost zemstvos exchanged information on gained experience. At the end of September and in October 1917, there were held meetings of volosts. Zemstvo meetings formed volost boards which included a head, two members of a board, a clerk, an accountant, a statistician and a tax collector. While holding elections, uyezd zemstvo boards and representatives from volosts were working on establishment of volost zemstvos' territories, mapping out zemsvo volosts, calculating their future profitability. But even during volost meetings, uyezd zemstvos did not decide on the number of volost zemstvos and territory of zemstvo volosts. Only on 3 December 1917, there was held a meeting of Poltava uyezd zemstvo with representatives of volost zemstvos which adopted a final decision on the division of the uyezd into 20 volosts.

Key words: zemstvo self-government, province, uyezd, volost, zemstvo assembly, board, powers of zemstvo institutions.

KOLESNIK V., LUBCHENCO P.

VOTING AND ESTABLISHMENT OF ELECTION RESULTS: PROBLEMS OF LEGAL REGULATION

The article highlights the organizational and legal problems of regulation and further improvement of the voting and establishment of election results in the context of the use of foreign experience of modern technologies.

Procedure for voting by current electoral legislation of Ukraine seems too complicated and technological. Algorithm actions of election commissions, voters and other electoral subjects stated in the current electoral law is too detailed.

Implementation of electoral law in general and particularly in the processing of ballots, vote counting and establishment of election results at the polling stations depends largely on the quality and quantitative composition of election commissions on how proportional representation of political forces are. Unfortunately, with the formation and activities of committees in organizing and holding elections in Ukraine are typically very complex problems arise. Electoral manipulation, carried out formally in accordance with the applicable law, can largely negate the principle of proportional representation of political parties in election commissions.

Fairly common in domestic practice is a way of violation of election law during the vote as a fee for buying a blank vote in the voter , filling his attackers in accordance with the wishes of the customer and the transfer has completed ballot to the voter as another for a fee to use when voting. Unfortunately, creating real obstacles to such offences do not care either lawmakers or the election commission or law enforcement.

In Ukraine voting in elections by using ballots is traditional practice. But as the practice of elections in our country, that the ballot is often used for various manipulations, many of which are illegal in nature. That's why legislators tried to regulate in detail the process of manufacturing, storing, transferring, using, calculating and archiving. However, as shown by the election of people's deputies of Ukraine in 2012, the effectiveness of regulation of these relations remains low.

The international experience to solve problems accelerate the process of counting, as well as reducing the impact of commissioners on the results apply various devices and technologies - mechanical voting machines, punching ballots and electronic voting system (optical scan and direct recording via the touch screen of direct recording via push-button terminal, remote electronic voting and other scientific and technological achievements). Undoubtedly, all these methods and

tools have advantages and disadvantages, but is constantly trying to find ways to improve voting technology.

In Ukraine voting should be organized with special technical devices for voting. Ukraine has all the possibilities to organize the production of machines for voting and, moreover, the cost will be substantial. And if you compare the enormous costs of ballot (paper quality, printing, protection system), storage and transportation, it is safe to say that the production and continuous use of voting machines are much more beneficial than organizing elections via ballot. Moreover, the automatic transmission (reading) the relevant information concerning voting simultaneously on three fronts (election commissions at all levels) and, therefore, ensuring continuous operational control and capable of prevent any abuse and attempts to correct the results of voting in the precinct or district

Key words: voting, ballot, vote counting, establishment of election results, electronic voting.

HLADUN Z.

ADMINISTRATIVE AND LEGAL REGULATION RELATIONSHIPS IN THE FIELD OF HEALTH PROTECTION DUE TO THE LEGISLATION OF UKRAINE

Categories "legal health protection", "objects and subjects of health protection", "administrative and legal health protection" are reviewed in the article. The author distinguishes "protection of individual human health" and "protection of public health", claiming that they are governed by almost all branches of law, but dominant among them are administrative and civil law. The paper contains an analysis of legal and administrative health protection. Administrative and legal nature, types of administrative legal relations arising in this area are observed in the article.

The aim of the paper is to investigate the principles of administrative and legal regulation of relations in the public health system. Speaking on the protection

of human health, we mean a system governed by legal rules of social relations in the field, the purpose of which is achieving the highest standards of physical and mental health, where subjects are individuals and legal entities including patients and health professionals, health institutions and public authorities. So among these relationships (organizational, financial, professional, etc.) the most important are the legal relationships that give rise to speak about health care by legislation, or legal health protection.

The objects of legal health protection can be:

– personal health of individual (natural person) ;

– public health (i.e. health of a certain group of people (enterprise labor collectives, institution, organization, or inhabitants of a village ,town, city, district, region or the whole country). Consequently, the objects of administrative and legal relations in the health sector are such intangible benefits as people life and health, as well as their behavior and such tangible assets as movables and immovable property, medical equipment, pharmaceuticals, medical instruments, medical documents, etc.

Central position among the legal norms regulating relations in the field of public health belongs to the administrative law, which suggests administrative and legal health care. It implies taking various measures to ensure and strengthen health due to the administrative law.

Ukrainian legislation on health regulates several types of administrative jural relationships. The analysis of the relationships allows to identify their specifics and to distinguish the difference. According to the criterion they can be divided into the following jural relationships groups, that can be find:

– in the process of providing medical care and taking measures to protect public health;

– in the process of defining the administrative and legal status of legal entities receiving and providing health care ;

– in the process of organizing and providing hygienic and sanitary-epidemiological welfare of the population and the implementation of public sanitary inspection ;

– in the process of the state and municipal administration of providing health care and government regulation of economic activities in the health sector;

– in the very process of providing health care;

– in some areas of medical practice : therapy, surgery, psychiatry, preventive treatment, transplantation, clinical trials of drugs , etc.

Key words: health protection, administrative and legal relationships, objects and subjects, content and types of administrative and legal relations in the field of health protection.

KOSTRUBA A.

CIVIL LEGAL RELATIONSHIP IN THE MECHANISM OF REGULATION

The article is devoted to the analysis of place and importance of civil legal relationship in the mechanism of regulation. The author notes that being an integrated system of elements mechanism of legal regulation in general able to lead to consequences that can not be caused by its individual elements themselves. In this regard all the elements of the mechanism of legal regulation of the relationship are connected between themselves and influence each other in some way.

The views on the mechanism of legal regulation of property relations are considered in the article. In particular, the author notes that mechanism of regulation can be described in narrow and wide senses. In the narrow sense it is a combination of some elements – legal facts, acts of right evaluation, legal rules and legal relationships that in aggregate are able to achieve the goal of the legal regulation of property relations. This vision devoid of the emotional component and represents the mechanism of regulation in purely instrumental character. In turn, in wide sense the mechanism of regulation in addition to the listed elements is

supplements with various "emotionally and psychological" elements, such as sense of justice, legal culture and more.

It is noted that the original and fundamental basis of the legal regulation of property relations is the rule of law. Other elements of the mechanism of regulation have secondary nature in relation to this element. In turn, the relationship is nothing but a shell of existence and legal form of public relations.

The author considers that the dynamics of relationships is determines by two major legal facts – beginner and concluding. Beginner legal fact is a legal model of behavior that is fixed in the rule of law and that can be the reason for the occurrence of the relevant legal relationships. Prior to the rise of this legal fact a rule of law has the character of unrealized model of behavior. The concluding legal fact is actually the accident of reality that terminates the existence of legal relations.

It is proved that the beginner legal fact has place out of legal relationship because at the time of its occurrence such relation does not exist. And vice versa – the concluding legal fact has place within the time of existence of legal relationships because such an existence is the sinequanone circumstance for the conclusion.

Beginner and concluding legal facts make accordingly the origination and deprivation influence over the legal relationships while all other legal facts within these relationships regardless of its nature has right-modifying character because they only lead to the modification or termination of the rights and duties of the parts of relationship.

Its determined that all legal actions of the participants within the existence of the relationship (within the period between the beginner and concluding legal facts) may be in the form of legal fact or acts of right evaluation. It depends on consequences to which such actions can lead.

The author proves that legal relationship in the mechanism of regulation can be seen as a goal of its functioning, the indicator of its efficiency, its element and the form of existence of public relations.

Key words: regulation, mechanisms, legal fact, the legal relationship

ZADYKHAILO D.

SEPARATE LEGAL CHALLENGES OF OPTIMIZATION OF LEGISLATION IN SPHERE OF ECONOMIC RELATIONS

The article discusses the establishment of a systemic connection between "legal economic order" and " economic constitutional order", also focused on the potential use of public- private partnership in the relationship with the oligarchic holdings and raised the issue of legal regulation and cross-sectoral nature of government macroeconomic regulation.

The article describes the dysfunction of the existing constitutional regulation of economic relations. So, the question is raised about the lack of legal consolidation of business activity in the system of market relations , the absence of constitutionally the state regulation of economic activity. Emphasizes the need for the structuring of the Constitution of Ukraine in a separate section of the "economic system" with fixing key aspects of the functioning of a modern market economy in the conditions of globalization. In particular, the question of legal consolidation of business entities, the protection of corporate rights, legal regimes of management, regulatory roles and functions of state of economic relations. A separate problem is the definition in the Constitution of Ukraine of the special role of small business and legal forms of its state support. Actualized problem oligarchic structure of holdings in the national economy and the need for development of legal policy in this regard. Oligarchic holdings discussed in the article as subjects macroeconomic authorities. Therefore, the construction of public-private partnerships is preferred to address the establishment of responsibilities between the state and the oligarchic holdings in order to achieve macroeconomic results regarding the rate of growth, innovation, environment protection, social obligations etc.

Separately, the article raised the question of the formation of a holistic and system mechanism of legislative support of macroeconomic regulation. It is stated that even in the form in which it exists today, much of the aspects of the separate tools such regulation is almost absent in the Ukrainian legislation that violates the requirements of Art. 19 of the Constitution of Ukraine.

Particularly affected by the question of cross-sectoral integration of legal regulation of economic relations, which affects not only business items , but also the financial, environmental, and other branches of national law. Particularly acute this integration is required in the creation of a legal mechanism for the implementation of macroeconomic regulation.

Key words: legal economic order, public-private partnerships; government macroeconomic regulation.

MOSHAK G.

RESEARCH OF ACTIVITY OF POLICE BY THE PROFESSOR M. KILLIAS AND THEIR VALUE

The article considers the fundamental principles of the contents and methods of studies by professor of the University of Zurich (Swizerland), M. Killias, related to the police performance evaluation.

Survey of victims in 2011 performed by M. Killias by up-to-date author's methods, belongs to significant criminological achievement in terms of depth of scientific interpretation of the results. It has demonstrated that in Switzerland the amount of rape crimes, robberies, illegal entries of a dwelling has increased. Over 7% of respondents notified that in recent 6 years they suffered from illegal entry of a dwelling, while in 2004 they were just 5,1%. Most crimes were committed mainly in public places by the persons under 26 years of age. In terms of rape offences and crimes Switzerland took up the middle position among the European countries. The author proposes to give up two myths: that Switzerland is the "island of safety" and that it is the safest country of Europe. M. Killias belives that

the main reason is lenient criminal legislation. Who beats – doesn't have specific problems, which would prevent him from such a behavior in the future. Reform of too lenient criminal legislation and change of living standards of victims shall change the negative tendency.

In solving the problem of victim's rights protection, M. Killias places special emphasis to proper execution of police functions, which requires increase in the quantity of police officers according to the requirements and objective changes of modern society.

The majority of respondents are satisfied both with police performance, and providing information on the proceedings. M. Killias concluded that filing of an application to the police on crime depends less on the image of the police than of personal factors - the amount of damage, comparison of possible losses and expected profits.

Prevalence of power abuse of police officers consistently decreases population confidence in them. According to the data of A.A. Bova (for 2006) among persons addressed to police, 25% of victims of theft from a car, 11% of victims of theft from dwelling, 14,3% of victims of robbery and 20,8% of victims of assault wee satisfied with police performance. In Switzerland, as opposed to Ukraine, high level of population satisfaction with police officers' performance is based on positive changes in the presence of police officers in special places and qualitative work of police officers generally.

Important directions of enrichment of Ukrainian sciences of criminal cycle include assimilation of ideas and methods of studies from the works of M. Killias in German, English and French languages, and publications of other German-speaking specialists. Study of the police performance under the methods of international crime victim survey (ICVS) opens possibility of full-scale comparisons and integration of Ukrainian scientists into scientific great spaces of EU countries, as well as improvement of effect of scientific developments on the practical activities of the authorities of the Ministry of Internal Affairs of Ukraine.

Key words: police, researches, poll technique, experience of German-speaking scientists

HIZIMCHUK S., OLIINYK O.

SUBJECT OF THE CRIME ILLEGAL ACQUISITION OF SURFACE SOIL (SURFACE LAYER) OF LAND (ART. 239[1] CC)

The proposed paper concerns the issues of definition of the crime under Art. 239[1] CC of "Illegal acquisition of surface soil (surface layer) of land". In contrast to the prevailing theory of criminal law point of view on the subject of recognition of the crime of topsoil, the authors believe that this serves as a humus horizon of the soil. The disadvantages of the concept of "fertile soil" is the original character of fertility, seasonal soil fertility, complexity issues of qualification of offenses and criminal acts delimitation of administrative offenses. Instead, the term "humus horizon" soil into account its chemical composition, physical structure, depth and suitability for plant growth that contributes to accurate final value qualification of the crime.

Within the humus horizon of the soil can be allocated separate layers (pidhoryzonty), differing humus content, temperature, features flora and fauna. The top layer – humus-active (maybe arable (20-25 cm) or covered with turf (5 cm)), followed by a Humus and ultimately less Humus. Total thickness (depth of) humus horizon depends on the strength of transformative impact terrestrial climatic factors, plant roots and soil fauna. Thus, in the Carpathian Mountains, Carpathians and Transcarpathian region, the soil layer which is represented by brown, sod-brown, podzolic-hleyevymy, meadow brown acid soils capacity humus horizon is 41-70 cm in the forest-steppe zone occupied predominantly black and typical – 71-120 Heavy Duty cm horizons (more than 120 cm) are found only in neerodovaniy Pridneprovskaya valley. The steppe and dry steppe zones dominated by soils with a capacity of 41-70 cm humus horizon (black normal, usual thin, southern, dark chestnut and chestnut soils). Depending on the thickness of the layer removed is

actually illegal land act qualifies as an administrative tort (removal of humus humus-active pidhoryzontu) or as the underlying offense (removal of all humus horizon or a large part, the lack of which entails a wind or water erosion). For exact qualifications offense should apply data monitoring land.

The results of these and other monitoring studies provide an opportunity to the law enforcement authorities to correctly determine the thickness of illegally removed first (and currently, stress, absent) humus horizon. Accordingly, it provides an objective legal assessment committed unlawful acts.

Playing major and crucial role in the ability of the soil to ensure the growth of plants, humus is a repository of sulfur, phosphorus, nitrogen, sol-elements. The quantity and quality of humus contents depend on the climatic conditions, the grain size of the soil (clay or silt content fractions), the origin of the soil type of natural vegetation (forest, stepova), redox conditions, and so on.

In addition to the power plant humus counts in the structure of soil structure as glues soil particles and forms a porous corns. The soil becomes loose, well let the water and the air, while holding them.

Key words: illegal acquisition, surface soil, humus horizon of the soil.

US O.

RULES THE CRIMINAL LEGAL QUALIFICATION OF CRIMES COMMITTED IN COMPLICITY

This article is devoted to the problems of the criminal legal qualification of crimes committed in complicity. Based on the provisions of the Criminal Code proposed by both general and special rules for qualification of crimes:

1. Acts of the Executive shall be qualified under section (part of the article) of the Criminal Code, and act organizer, instigator and accomplice - for the relevant part of the century. And that Article 27 (part of the article) of the Criminal Code, which provides for an offense committed performer. If the accomplice performed several roles in the joint commission of the crime and in particular the

role of the musician made (co-executor) - qualification of his act is only by sex (part of article) of the Criminal Code. If the accomplice performed as belonging to the so-called other types of associates (the role of instigator and accomplice) , then the formula qualifications played each of these roles.

2. When committing a crime by a group of persons (simple participation) act every accessory (accomplices) qualifies under the relevant section (the part of the article) of the Criminal Code. When committing a crime by a group of persons by prior conspiracy or by an organized group of accomplices act to be qualified under section (part of the article) of the Criminal Code, which provides for liability for crimes committed by the appropriate form of complicity, if it is marked as mandatory or aggravating circumstances.

3. Features that characterize a particular person and an accomplice affect the qualification of the crime, to be the attitude of blame only this accessory, whether they knew of other accomplices or not. Signs aggravating, are accessory to blame if: a) they are mandatory or qualifying elements of the crime, and b) an accomplice is aware of their presence in the deed performer.

4. Qualification acts accomplices Article, which provides crime with a special subject, if only possible accomplices realize that: a) the offense in respect of which there was a conspiracy may be committed only by a special subject, and b) the performer has featured such subjects object.

5. If excess artist accomplices act qualified as finished or unfinished crime (preparation of a crime or attempted crime) to commit conspiracy has taken place, whichever is fulfilled (completely or partially) or not objective side of its composition singer.

6. If not managed accomplices act, that act they qualify under Part 1, Art. And Article 14 (part of the article) of the Criminal Code, which provides for liability for the offense the commission of which failed to reach a conspiracy with links to the relevant part of Art. 27 CC.

7. In case of failure of voluntary act other accessory qualify for Part 1, Art. 14 hours or 2 or 3. 15 of the Criminal Code and the relevant article (part of article) of the Criminal Code, which provides for liability for the completed crime .

Key words: qualification of crimes, accomplices of the crime, the crime , the limits in relation to wine.

VAPNYARCHUK V.

SUBJECTS OF CRIMINAL PROCEDURE EVIDENCE

This paper reviews the main expressed in the scientific literature views on understanding the range of subjects of criminal procedural proof. They combined several approaches. The first approach is defined as the most common, suggests that subjects of criminal procedure are members of proof of criminal procedure, which play in proving permanent, long-term (at least in the same stage of the process) and the role of those who are in it alone or predstavlyuvalnyy Procedure interest. The second approach to understanding the economic evidence provides for the assignment to them, except the subjects of the criminal proceedings referred to in the first approach, also an expert and efficient worker. The third approach – the most extensive – the subjects of proof is any bodies and persons taking part in some kind of evidence-based activities and have certain rights and responsibilities. Fourth, the opposite is the most narrow approach lies in the fact that the subject of proof may be regarded as the one who takes responsibility because of its procedural position to argue that the defendant is precisely the person who committed the crime.

On the basis of the criteria defined by copyright, including: a) the performance of one of the main functions of criminal procedure (administration of justice, prosecution or defense – the publication expressed understanding of the nature of these functions), b) the availability of public or private (his or someone else's) Procedure of interest and c) based on an understanding of the nature of the criminal procedural proof (as a unity of activity and investigation to establish the

circumstances of the proceedings (evidence, knowledge) and the rationale and proof of the facts and arguments (statements) nominated thesis (proof – study) proposed classifying them court and the parties.

Based on the above author proposed definition of economic evidence. Subjects of proof – a participants of criminal proceedings that are defending their predstavlyuvanyy or legal interest in carrying out cognitive or substantiating evidence activity direction which is executing one of the main functions of criminal procedure.

Key words: Criminal procedure Evidence, Criminal Procedure subject of evidence , criminal procedure features of interest.

TROFIMENKO V.

CRIMINAL PROCESSUAL PROCEDURE: CONCEPT AND FEATURES

A number of heoretical approaches to understand the systems of a criminal process as well as the concept of a 'processual procedure' as a part of such a system are analyzed in the article.

According to the researches of the scientific positions of the law theoreticians, a processual procedure is considered within the context of a definite law field as a unit of the processual sectoral system. Provided however there appears a definite conflict and a contradiction of the suggested features of this concept.

We emphasise that processual jural relations that form the content of a separate processual procedure are not always connected with corporeal jural relations. They can take their origin from other processual relations having hereby their own focused characteristics, what attaches conditions the necessity of specifics of the law regulation.

According to the scientific positions of the law theoreticians the author remarks following components that form the structure of the processual procedure:

1) a complex of interrelated processual performances that are directed to solving of a definite task; 2) such kind of performances are realized because of processual jural relations that differ by focused characteristics; 3) the specifics of the processual jural relations and processual performances provide the specifics of the ways of realization of processual performance and 4) the necessity of formalization of the final processual results in corresponding acts – processual documents.

The accumulation of jural relations and processual performances that form the content of processual procedure are characterized by a definite autonomy.

According to the analyses and a compilation of approaches as to the determination of essential features of the criminal processual procedure that take place in the general-theoretical and criminal processual literature, the author related to those which reflect the juridical core of that concept and allow to separate it from other related concepts, particularly the phases of criminal process are following: 1) a complex relatively autonomous character of procedure – this is the compilation of interrelated processual performances that are directed to solv a definite task; 2) a special matter of procedure – such kind of performances are realized concerning processual jural relations that differ by its focused characteristics; 3) the specifics of the ways of realization of processual performances within the frame of the procedure that is provided by the specifics of processual relations and processual performances; 4) the existence of processual acts that are typical for a definite procedure provides the solution of its tasks and the final processual results are formalized in them; 5)the multisubjectivity of the procedure is concluded in the fact that in distinction from other structural components of the criminal process system, particularly from its phases, a criminal process within the frames of a separate procedure is always realized not by one competent person but by several persons who act in public interests in order to solve the tasks of a criminal procedure; 6) poly-staging of the procedure – every processual procedure has two or more phases.

The author’s definition of a ‘criminal processual procedure’ is determined.

Key words: a processual procedure, a phase, a court procedure, a criminal procedure.

LUTSENKO O.

PROFESSIONAL ETHICS VIOLATION AS REASON FOR TERMINATION OF LABOR RELATIONS WITH STATE EMPLOYEE. – ARTICLE.

The article is dedicated to one of reasons for termination of labor relations with state employee — professional ethics violation. Professional ethics violation by state employee is offered to consider as amoral offense. The necessity of working out and adoption of rules of professional ethics of state employees is grounded. This will provide the opportunity to group the behavior requirements according to concrete standards, to determine particular correlation between ethical and legal liability for infringement of clear establish rules of behavior, to improve legal liability for inobservance of rules of behavior by employees. At the same time at every state authority the rules of professional ethics should be worked out on base of legal act. As it's impossible to define and take account of all features of activity of different types of state employees centrally, the issue should be solved at the local level.

The proposition of foreseeing of single reason for termination of labor relations with state employees upon an initiative of assignment subject was expressed. The reason shall read as follows: «committal of amoral offense by state employee (professional ethics violation) incompatible with continuation of state service including the actions out of duty».

Key words: professional ethics violation, civil servants, the duties of civil servants, disciplinary offence, termination of public service.

ABBAKUMOVA D.

EVOLUTION OF CONVENTIONAL POWERS OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

This article is devoted to research the powers of the Committee of Ministers of the Council of Europe in accordance with the European Convention on Human Rights in different historical stages of its functioning. More than 60 years have been passed since the Convention was signed. Some provisions have changed or even lost their validity. Scientists did not pay sufficient attention to the question of the evolution of conventional powers of the Committee of Ministers that makes this issue topical and requires detailed investigation.

The author considers it appropriate to divide the activities of the Committee of Ministers into three stages of development, because depending on the functions assigned to it by the Convention, the Committee of Ministers played a different role in the Council of Europe and in ensuring its basic goals.

The first stage is limited to the period from 1949 to 1998. At this stage special attention is paid to the quasi-judicial functions of the Committee of Ministers. It is concluded that these functions had more political nature rather than judicial and legal. The views of scientists on this issue are analyzed and the relevant articles of the Convention were scrutinized.

The second stage is limited to the period from 1998 to 2010. It is noted that at this stage the Protocol №11 entered into force. It carried out radical reform of the control mechanism of the Convention. The author pays attention to the fact that after conducting the reform and making the appropriate changes, the Committee of Ministers remained only one function under the Convention – to supervise the execution of judgments of the European Court of Human Rights.

The beginning of the third period was chosen 2010 because from that moment one of the functions entrusted on the Committee of Ministers by the Convention, namely the supervision of execution of judgments of the European Court, again experiencing some amendments. Have been analyzed the provisions

of the Protocol №14, which became another level of the comprehensive reform of the control mechanism of the European Convention.

It is concluded that although the Committee of Ministers is the Council of Europe's statutory body, but at different times he had to perform at the same time the functions entrusted on it by the Convention. It is ascertained that since its creation the control mechanism and together with it the work of the Committee of Ministers did not give those results on which its founders were expected. However over the years, the Committee of Ministers managed to become a leading forum for discussing and resolving European problems.

Key words: European Convention on Human Rights, political body, Committee of Ministers, Council of Europe.

POLITANSKYI V.

THE RIGHT TO INFORMATION AS A FUNDAMENTAL HUMAN RIGHT: THE EXPERIENCE OF DEVELOPED DEMOCRACIES

In a scientific article, the author focuses on the study of right to information as a fundamental human right, namely the analysis of the experience of developed democracies (France, Germany, USA, Poland, Czech Republic, Slovakia). It highlighted the features and operation of the right to information in individual countries, which generally affect the formation and global picture of the right to information.

Noted the special importance of this law which in turn is the main element that binds the whole system of fundamental rights and freedoms of man and citizen. And most importantly, only by its observance can talk about the actual implementation and the development of personal, political, social, economic, environmental and cultural rights and freedoms.

The article states that one of the first countries where the right to information embodied in the constitutional level is France, where freedom of expression and communication is defined as one of the fundamental principles

guaranteed by law. That freedom is so important that it defined the ideal of a democratic state.

In Germany, besides strengthening the right to information in the Constitution, there is a separate law "On protection of information." It is in this state has taken a number of federal laws in the area of the right to information, which indicates the high level of developed democracies.

It is noted that the U.S. information legislation - is the benchmark to which to navigate the country in its efforts to build a good base of information legislation. In this country, lawmakers could create a system of laws governing information security with such brevity and generalization that zaneobhidnosti response to the problem will be instant. The legal system of the U.S. information security is one of the safest in the world, making it almost perfect and such, which should all be equal.

In the analysis of the right to information in Poland was noticed that it in most of their rules, laws and regulations coincides with the legislation of many countries. And this is especially evident in the right of access to official documents in Poland and Ukraine.

As the Czech Republic is the Constitution of the State asserts the right to information as a fundamental right of citizens of the state. Attention is accounted for the fact that the Czech Republic recognizes Convention on Human Rights and the European Court precedents as a priority, which in turn facilitates judicial protection as the right to information and freedoms.

Attention is drawn to the fact that Slovakia is a democratic constitutional state also provides for the right to information at the constitutional level, and most countries prohibits censorship. Interestingly, exempted from disclosure information relating to decision making by the courts, data collected bodies involved in the criminal investigation. A particularly interesting is that the official who violated the law could be fined 50,000 euros.

Research data was carried out by analyzing the question papers of famous Ukrainian, Russian and foreign scientists as the Soviet period and the present, which became the subject of the proposed research articles.

Key words: right to information, the state, democracy, the Constitution, law, principle, development, security of openness, accessibility, freedom, information, reliability, completeness, legality, distribution, use, storage, relationship.