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RABINOVYCH P., BACHYNSKYY T.

LEGAL WORLDVIEW (SOCIAL AND NATURAL INTERPRETATION)

This article is dedicated to the general theoretical analysis of legal worldview phenomenon and its nature, initial contents sources, separation and correlation with other similar legal phenomena (primarily with understanding of law and legal consciousness). This analysis is based on understanding of law grounded on socially-natural needs, which helped to avoid equitation of terms “legal worldview” and “juridical worldview”. The main conclusion made from the article is that the legal worldview is a person’s view of the world of naturally and socially defined possibilities to meet his or her needs, which belong to them and ensured by responsibilities of other subjects. At the same time, authors consider that juridical worldview (like Karl Kautsky and Friedrich Engels) is an idea according to which all social phenomena are the result of state-legal regulatory activity, in other words they are the product of the lex. Social and natural grounds, universality and equality of rights, tolerance to the rights of others, consensual nature of the possibilities implementation by its subjects and necessity of natural rights legal regulation are the main sources of socially-natural legal worldview (which is considered to be formed during childhood and youth, before learning the legislation of the state). There are also presented commented results of specifically-sociological survey on the condition of L’viv upper-form pupils’ legal worldview.

Key words: legal worldview, juridical worldview, legal consciousness, basic principles of legal worldview.

SKRYPNYUK O.

PROBLEMS OF PROVIDING OF THE STATE SOVEREIGNTY OF UKRAINE AT THE MODERN STAGE (CONSTITUTIONAL AND LEGAL ASPECT)

The article is devoted to the issues of state sovereignty, the specifics of its structure, the relationship with the popular and national sovereignty, the elements of the internal aspect of the sovereignty of the basic activities of the state to ensure national sovereignty. A special place belongs to ensure coverage of the interrelationship of state sovereignty and democratic development of the country and therefore reveals the basic problem of further democratization of the political and legal regime as guidelines for ensuring national sovereignty through the modernization of the Fundamental Law of Ukraine.

Noteworthy provisions on constitutional and legal mechanism, legal measures and means to improve security of state sovereignty.

Key words: Ukraine, state, national, national sovereignty, democracy, political and legal framework and basic guidelines for ensuring national sovereignty.

YERMOLAEV V.

THE JURY IN UKRAINE: HISTORICAL AND LEGAL ASPECTS. (FOR THE 150TH ANNIVERSARY OF THE JUDICIAL REFORM 1864)

The article deals with the historical and legal origins of the jury in Ukraine, highlighted its main stages: (1) the first stage of the period of Kievan Rus in the judicial system when there were vervni (community-based courts), the institution of “Judicial men” was the examination procedure for civil and criminal cases involving members of the local community, the use of purification sworn, different tests – ordeal (Dei Judicium) in deciding the guiltiness of the defendant. One of the oldest forms of public participation in the administration of justice were veche (public assembly); (2) the second phase of the background of the jury in Ukraine falls on a day the Polish-Lithuanian domination of the Ukrainian lands at the end of XIV – first half XVII century; (3) Ukrainian National Revolution of 1648, the process of state-building and Republican statehood initiated the new, third stage, when the process of state-building created own judicial system – the General

Court, regimental, centesimal and community (village) courts; (4) next, the fourth stage in the history of the jury in Ukraine was connected with the conduct of the Russian Empire Judicial Reform in 1864 and the introduction and operation of this institution of legal proceedings in the Ukrainian lands. At first Judicial Reform was based on the principles of separation of the judiciary from the legislative, executive and administrative, independence and immovability of judges, introduced All estates court and the institute of juries in district courts. The District Court was the court of first instance in all civil and criminal cases that were beyond the jurisdiction of magistrates courts. Final pages in the history of the formation and development of the court with the participation of the people in the judicial system of Ukraine were connected with the era of the National Liberation Struggle 1917 – 1920; (5) With the declaration and building of independent democratic state of Ukraine there were launched a new, modern stage in the long history of the jury. Ukrainian lawmakers on a new qualitative modern level of consolidated and developed the domestic and foreign traditions and experiences of this form of people participation in the justice system, made them the important part of the current judicial reform in Ukraine. Institutes of people's assessors and juries may affect positively to democratization of the judicial system and strengthen public confidence to judiciary and judges, believe in justice and law.

Main attention of the article was focused on the analysis of the provisions of legal regulations in 1864, the Soviet legislation on People's Court, the restoration of the jury in current Legislation in force.

***Key words*:** jury trial, lay judges, justice, procedural legislation.

KHRYSTOVA G.

THE «R2P» DOCTRINE: RESPONSIBILITY OF THE STATES AND INTERNATIONAL COMMUNITY TO PROTECT HUMAN RIGHTS

The article is devoted to the doctrine of «responsibility to protect» (widely referred to as «RtoP» or «R2P») that provides revised outlook on the so-called

«right of humanitarian intervention» and gives the new answer to the question of when, if ever, it is appropriate for states to take coercive (in particular military) action, against another state for the purpose of protecting people at risk in that other state.

The «R2P» doctrine was first elaborated in 2001 by the International Commission on Intervention and State Sovereignty (ICISS) led by G. Evans and M. Sahnoun. Under the view of ICISS the responsibility to protect embraces three specific responsibilities: 1) the responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk; 2) the responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; 3) the responsibility to rebuild, that includes post-intervention obligations: to provide full assistance with recovery, reconstruction and reconciliation particularly after a military intervention.

The «R2P» doctrine received renewed emphasis in 2004 due to the Report «A More Secure World: Our Shared Responsibility», developed by the High-Level Panel on Threats, Challenges, and Change. The Panel stated that the «R2P» doctrine is an emerging norm that sovereignty is not a right, but that states must protect their populations from mass atrocity crimes—namely genocide, crimes against humanity, war crimes and ethnic cleansing. The international community has a responsibility to assist the state to fulfill its primary responsibility. If the state manifestly fails to protect its citizens from the four above mass atrocities and peaceful measures have failed, the international community has the responsibility to intervene through coercive measures such as economic sanctions. Military intervention is considered as the last resort.

This concept was unanimously supported by 191 heads of state and government representatives at the 2005 General Assembly World Summit (para. 138 and 139 of World Summit Outcome). In 2009 the Secretary-General presents the report «Implementing the responsibility to protect» that provides the three-

pillar strategy of the «R2P» doctrine implementation: «the protection responsibilities of the state», «international assistance and capacity-building» and «timely and decisive response». The latest includes the acceptance of military intervention for human protection purposes that must meet the criteria for military intervention. Six criteria were identified for defining when a situation is appropriate for military intervention: right authority, just cause, right intention, last resort, proportional means and reasonable prospects.

At the conclusions it's stated that further development and recognition of the «R2P» doctrine will contribute to the fulfillment of the obligations of the state and international community to protect the populations from mass atrocity crimes as well as it will keep the individual state from violations of the norms and principles of international law.

Key words: responsibility to protect, mass gross violations of human rights, humanitarian intervention, criteria of military interference, state sovereignty

HAUSTOVA M.

THE PROBLEMS OF LEGAL SYSTEM CLASSIFICATIONS

Problem setting. The Legal map of the present – day world is a rather complicated and nonuniform creation. It represents the location and peculiarities of national legal systems.

Recent research and publications analysis. The legal map of the world is characterized by a high level of dynamics, demonstrating the main political and legal changes (the formation of new national legal systems, the influence of integration processes). The simplified approach determines it only as a collection of national legal systems, i.e. legal systems of all existing states.

Paper objective. However, besides national and existing with in their boundaries, the so – called subnational legal systems which have substantial autonomy, there are also legal systems, the object of which extends beyond the territory of one state. They can be called transnational. Among transnational legal

systems we should mention in the first place the so – called intergovernmental legal systems which are formed by some states according to the international agreements which are concluded. The example of such a system is the legal system of the European Union which is characterized by its own structure and sources of law, the forms of lawmaking and entorcement, the specific mechanisms of the protection of legal regulations against possible violations; the legal system of the Council of Europe etc.

The classification of legal systems into national and transnational is aimed at disclosing the nature of a legal system as a creation which is not confined to the boundaries of one state. So, on the legal map of the present - day world it is necessary to recognize national (to the structure of which can be included subnational) and transnational (international and religious) legal systems which exist, copete with each other and provide international law order.

The reasons of legal system diversity are first of all connected with the fact that the form and the content of a legal system are directly influenced by historical traditions and conditions of the origin and formation of a historically specific state and law and also the specific character of their evolution and development. legal systems can be formed under the influence of certain historical factors, but they can be transformed under the influence of other factors which had an influence on the course of their development and functioning.

Paper main body. To make different legal system more available for a scientific analysis and to determine their status among other legal systems the classification is used. The fact that various legal systems have common features allows to classify them among themselves or divide into individual groups or legal Families depending on one or the other of common features.

It is analyzed in the article that the very process of legal system classification of the present is connected with great difficulties. Among them there are the occurrence of some unique features in every national legal system and the unsolved problem of criteria according to which classifications are made. In the meanwhile, the importance of classifications is great because their results don’t

make it necessary for the legislators to deal with problems of unification, previous analysis and finding out those legal systems which are more or less inclined to mutual approach to each other, to significant unification or only to external harmonization of their individual views or aspects. Besides, classification allow to provide practical recommendations or proposals as to the partial improvement of legal systems or their total reformation and contributes to the peculiar "exchange of experience» among different legal systems for the sake of their optimal structure and functioning.

Different typologies of legal system which were proposed by foreign and native authors have been analyzed in the article.

Conclusions of the research. Taking into account different approaches, there was proposed the most optimal criteria of the classification from the author's point of view, namely : ideological component, legal awareness and legal culture of the society which must become the main criteria of legal system typologization into legal families. The form of all other phenomena of a legal system – legal regulations and their system, sourses of law, peculiarities of enforcement etc. – is the result of definite legal awareness of the society. It was been also noted that in some cases it is possible to mark out other additional criteria which, on the one hand, should express the specific character of legal awareness as brightly as it is possible, and on the other hand-should be simple, instrumental and suitable for comparison. One of the most suitable criteria in this respect is sources of law. Taking into account the mentioned criteria, two independent families of Religious and Traditional law have been marked out together with generally known families of Romanic – German and Anglo- American laws.

Key words: legal system, legal family, classification, typology, national, transnational, Romanic – German legal family, Anglo- American legal family, Religious and Traditional legal families.

INSHIN N.

VALUE OF PROTECTION OF WORKERS LABOR RIGHTS IN THE FORMATION OF THE LEGAL STATE

This article examines theoretical approaches to the nature and importance of protection of labor rights, defined its important role in law state. The author has provided definitions of the studied concepts like «right to protection», «forms of protection of workers labor rights», «means of protection of workers labor rights».

The author observes that the protection of labor rights can actually be realized only with the legal establishment of the right to protection of law, that it is securely attached to a particular legal norm of a particular legal act.

Employee's right to protect their labor rights is a legal opportunity to use the employee to protect their labor rights established in legal acts of enforcement action or consult the relevant competent national or international bodies, institutions, and individuals to further their right to protection in order to restore disturbed labor rights.

Outlined that under the forms of protection of workers labor rights should be considered as legal complex of special legal procedures that can make law enforcement and human rights agencies (institutions, individuals), and directly relevant staff within the human rights process, aimed at the restoration of disturbed real labor rights and further provided valid regulatory acts of adequate compensation for violations of the material, moral or organizational-legal character.

It is concluded that the legal regulation of means of protection of workers labor rights in conditions of Ukraine as the law state is in good enough conditions, but needs improvement, amendments and reforms to strengthen the inviolability of workers labor rights in practice. Protection of workers labor rights is an important part of democratic, legal and social society, which tends to be Ukraine.

***Key words*:** legal regulation, protection of labor rights, worker.

YAROSHENKO O.

AS FOR THE CENTRAL PLACE IN THE SYSTEM OF STATE SOCIAL SUBJECTS OF LABOR LAW IN UKRAINE

The paper considers central to the welfare state are already subjects of labor law in Ukraine. It is concluded that the welfare state is characterized by the ongoing dialogue with the state of man in politics, economics and culture. The basis of the material provisions of which is the development of innovative information technology resulting from scientific and technological progress and are a means of further development of the latter. Innovative development enriches the minds of the population, its social and political interests and demands that promotes change in the functioning of state institutions in various fields.

The main priorities of the Social Policy of Ukraine in the workplace include: improvement of labor legislation; improved monitoring and forecasting of the labor market; to balance professional education and labor demand; stimulate economic activity; broad public awareness the public on their employment rights and how to protect them, the benefits of legal employment; creation of a guarantee fund for the protection of employees' claims in the event of insolvency of the employer; development of human resources; improve the quality of jobs; development mechanism for implementing international agreements on mutual employment and social protection of migrant workers, to which Ukraine is a creation of effective mechanisms legalization of incomes of citizens working abroad; improve the efficiency of supervision and control over compliance with labor laws.

Thus the improvement of the legislation is nothing more than the realization of the social functions of the state, to ensure the right of everyone to have a decent life. Further development of the regulatory framework for social development must be based on the following principles: (a) social justice and equality above all the social rights of all citizens; (b) individual social responsibility – the duty of citizens to perform their best for self-reliance and self-help; (c) social solidarity – the formation of the system of relations in which the whole society meets social

difficulties as a single, coherent system; (d) social partnership, respect by all parties of the agreements; (e) social compensation – creating citizens of compensation restrictions caused by their social status; (f) social security, providing for providing citizens with a guaranteed minimum of social services; (g) vicarious support community initiatives in addressing issues of social development.

Key words: welfare state, subjects of labor law, social policy, social partnership, social dialogue.

MOSKALENKO E.

THE QUESTION OF THE LEGAL FRAMEWORK OF SOCIAL INSURANCE OF THE POPULATION IN UKRAINE

The author investigated the history of the development of social insurance of the population in Ukraine. They noted that the origins of insurance of the population accounted for 90-ies of the XIX century.

Investigated the activities of the Kharkiv working societies and the Odessa society of mutual insurance manufacturers and artisans from accidents. Defined the first steps in the legislative regulation of this sphere, in particular, analyzed the Law On the compensation of victims due to accidents of workers and employees, as well as members of their families, enterprises factory, mining and plant industry" 1903, its main provisions and conclusions about the positivity of this legal act. In the context of this article also reviewed scientific opinion lawyer A.M. Nolken respect to this legal instrument.

The author of the article the influence on the development of insurance of the population of the revolution of 1905 and analyzed laws, which were adopted by a Third State Duma as a result of active strike movements of that time. In particular, "About maintenance of the worker against sickness", "On insurance of

workers against accidents", "On education of the presence of insurance business" and "About formation of the Council of insurance business".

The author analyzed the size of material aid in accordance with division by categories of employees are separately discussed the relations arising in connection with pregnancy. Also differentiated relations due to injury, disability and death of the employee.

Separately investigated pension provision of employees in terms of coverage and defined procedures preceding the assignment of pensions.

Key words: insurance of the population, the history of the development of social insurance, retirement insurance, maintenance allowance, the insured person.

GETMAN E.

OF SUBORDINATE LEGAL ACT: CONCEPTS, FEATURES, FUNCTIONS AND TYPES

This paper discusses the basic scientific approaches to understanding the by-law normative legal act , its features and functions. Analyzed Laws Belarus, Kazakhstan , Tajikistan, Uzbekistan to the legal definition of subordinate normative legal act. The necessity of fixing the term " subordinate normative legal act " under the law of Ukraine .

Based on the analysis, it was proposed to divide the signs by-law act in common (generic) inherent laws and regulations in general and special (family), inherent by- laws and regulations of the executive power in particular.

Established that subordinate legal acts performed primarily regulatory function , which in turn are divided into primary function (in the primary setting of the law subordinate regulatory acts) and secondary (with specificity , the development and improvement of the law established regulatory legal acts of higher legal force) regulation; management functions : outreach and specifying functions (rules contained in sub- legal acts specify , clarify , improve standards establish normative legal acts of higher legal force); pravoustanovchu function (

implemented with the introduction of the law subordinate regulatory acts); pravorealizatsiynu function (norm subordinate legal acts reinforce certain orders , regulations, implementation of which almost reproduces the norms established by the Constitution, laws and codes of Ukraine).

Courtesy of the author's definition of subordinate normative legal act which is considered as formal written document authorized executive body established under and pursuant to the Constitution and laws of Ukraine , which includes , changes or cancels the law is created according to the legislation of the application of special means legislative technique.

The types of sub- legal acts of the executive authorities of Ukraine, which, inter alia , include: regulations, orders , regulations , rules, regulations , statutes , etc.

Key words: Of subordinate legal act, executive authority, signs of secondary legal acts, functions, regulations, types of sub-legal acts.

KARNAUKH B.

CIVIL LIABILITY: LAW AND ECONOMICS OUTLINE

The article is devoted to the research of civil liability through the alembic of law and economics. The author tries to show that juridical rules and ideas are clear enough to be put in mathematical terms; he aims to prove that law is the justice math. The main tool for meeting that goal is economic analysis of law. The article introduces the main statements of law and economics theory concerning the problem of civil liability. Liability in civil law is considered to be the mechanism of allocating costs. As demonstrated by law and economics the total amount of costs, related to the facts of rights violation, includes two main summands: damage sustained by plaintiffs and costs of precautions fulfilled by defendants. In this respect both summands depend on the level of care exercised by defendants. The purpose of civil liability is to minimize the total sum of costs, caused by the facts of rights violation.

By the means of civil liability plaintiffs can shift their losses on defendants. But for the damages to be allocated on a defendant, sufficient reason should be proven before the court. Such a reason includes four elements, which are called the preconditions of civil liability or elements of civil offence. They are: misconduct, damage, causation and fault. These four ingredients constitute the fact at issue in cases where plaintiffs seek for compesation of damage caused. The statements of scientific doctrine concerning the set of elements of civil offence are formalized by using logical symbols.

Every element of civil offence is worth to be the subject of distinct scientific research. But the author concentrates on the concept of fault. In this regard the author shares and elaborates so-called behavioral theory of fault. Thus fault is defined as juridical concept, the content of which consists in stating that the wrongful act was committed in situation of free choice, wherein the rightful variant of behavior was available and reasonably expected. In other words one is considered to be at fault if he did not take the precautions, which could be reasonably expected from him in the situation. So the main question is to decide what precautions could be treated as reasonable.

The concept of fault is the same for both contract and tort law, but the criterion of reasonable expectation differs in those two areas of law. The difference between reasonable expectations in tort and contract law is specified.

Thus in tort law reasonable expectations demand from potential injurer to take only cost-justified precautions. Cost-justifiability of precautions is estimated on the basis of Hand's formula. Within the realm of contract law in contrast it is reasonable to expect performance from a debtor nevertheless such a performance could be not profitable or even loss-making for him.

Key words: law and economics, civil liability, fault.

GLIBKO S.

LEGAL REGULATION OF BANKS OPERATIONS WITH A MORTGAGE BONDS

In modern crisis conditions of financial and investment services markets in Ukraine, for detection of problems in circulation mortgage bonds it is necessary to analyse individual questions of legal regulation of economic activities in financial institutions, including the banks, connected with release and the reference of these securities.

Scientists of different branches of science and law mark value of mortgage bonds among tools of stock and investment markets. In economic science these questions were investigated by N. S. Krychok, A. S. Kirizleeva and others. In legal researches connected with the questions exposed in this article were engaged regarding development of stock market and its tools by A. O. Prystupko, I. L. Nurzad, N. M. Kvit, as to mortgage lending by V. G. Pershyn, as to studying of economic legal regulation of mortgage relations and investment by N. V. Revyuk and others scientists.

The cited data by National Securities and Stock Market Commission of Ukraine also shows low activity on release and the reference of mortgage bonds and the activity connected with it in Ukraine and simultaneously a considerable role of banks in circulation these securities.

Proceeding from the definitions provided in the legislation and the maintenance of operations, on the economic essence management of a mortgage covering and activity of the emitter is financial intermediary which provides due service of creditors (owners of bonds) and payment of incomes by it from the borrowed money. But outside of legal definition of such activity remain the obliged subject in such extra mortgage relations, which the emitter of mortgage bonds is, and interests of mortgage bonds owners which are the most vulnerable in these relations.

Licence requirements confirm the greatest suitability of banks in comparison with other financial institutions for activity both on release of mortgage bonds, and on management of a mortgage covering.

Establishment of considerable requirements to the emitter and the manager of a mortgage covering on solvency and the amount of assets, concerning licence conditions, lead to employment of a leading place in the market concerning release of mortgage bonds by banks and the financial institutions connected with them. In this connection, for elimination of abuses from banks pertinently not to strengthen restriction in activity on release of mortgage bonds and management of a mortgage covering, and to enter obligatory additional guarantees for investors with a side of third persons in the presence of the connected banks and financial institutions.

It is necessary at legal regulation assignment of financial services during release and sale of mortgage bonds, formation of a mortgage covering, in conclusion of the management contract to enter standardization at level of National Securities and Stock Market Commission statutory acts.

Key words: bank, bank operations, mortgage covering, mortgage bonds.

TATSIY V., TJUTJUGIN V., GRODETSKYI YU., BAYDA A.

DISCUSSIONS ABOUT IMPOSING LIABILITY FOR MISDEMEANOUR

Different approaches concerning the solution of question of reasonability to establish responsibility for misdemeanor in the currently existing legislation of Ukraine are analyzed, as well as main conceptual positions of material and procedural law norms studying misdemeanors.

Positions of legislative proposal of Law of Ukraine N 4712 from April 16, 2014 are criticized. The main idea of this law project concerning establishing responsibility for misdemeanor in terms of Criminal Code of Ukraine seems doubtful. In connection with this, propositions about substitution of concept ‘criminality of act’ for ‘criminal wrongfulness’ seem unjustified, as well as about

category of ‘criminal wrongful act’ implementation including such of its types as crime, misdemeanor etc.

Such innovations will inevitably lead to considerable expanding of boundaries of criminalization, as according to the approach suggested, those acts nowadays considered as administrative delinquencies will be considered as crimes.

Another conceptual regulations of law project involving main statutory regulations of currently existing criminal legislation of Ukraine are criticized as well.

A more appropriate solution concerning introduction of ‘misdemeanor’ category into Ukrainian legislation by way of legal enacting of separate normative act, The Misdemeanor Law (Code) of Ukraine, is suggested. Main conceptual regulations of this normative act are presented.

Key words: misdemeanour, criminal offence, responsibility for misdemeanour.

ZHURAVEL V.

ROBLEMS OF DIVISION INTO PERIODS OF PRE-TRIAL INVESTIGATION

In the article, taking into account the norms of current criminal procedural legislation of Ukraine and positions of general theory of the criminalistics, modern scientific goings to determination of division into periods of pre-trial investigation is considered. The marked problem always confessed actual and impotent, as every stage of investigation determines the own circle of strategic and tactical tasks, facilities of their permission, directions of activity of investigator.

At finding out of division into periods of pre-trial investigation it is necessary to go out from that criminal realization has a severe certain underlying structure the stages and stages come forward as elements of that, thus the first are a more volume, include for itself the determined amount of the stages, and that is why they cannot be equated and use as synonyms. Pre-trial investigation confesses

as the stage of criminal process and exactly within the limits of this stage it follows to distinguish the certain stages, as signs of successive motion of criminal realization, procedure of assembly of proofs.

For today it is possible to distinguish such going near determination of the stages of pre-trial investigation : 1) normative after that the selection of the certain stages is related to the acceptance of corresponding judicial decisions; 2) situation-logical, where a division into periods depends on situations, that arise up specifics of those tasks, that must be untied; 3) mixed, in other words normative and situation-logical, that foreseen combination of the marked approaches and allows to examine its as more compatible.

Among the stages of pre-trial investigation it is expedient to distinguish: 1) opening of criminal execution (outgoing stage); 2) beginning of criminal execution (initial stage); 3) continuations of criminal execution (next stage); 4) completions of criminal execution (finishing stage).

Key words: criminal procedure; stages of criminal procedure; pre-trial investigation; stages of pre-trial investigation; outgoing, initial, next and finishing stages.

VAPNYARCHUK V.

THE ESSENCE OF THE CATEGORY OF "BURDEN OF PROOF" IN CRIMINAL PROCEEDINGS UKRAINE

The burden of proof in a criminal trial – a legal phenomenon, the essence of which is driven by interest in a particular subject procedural necessity of proof to defend their legal position by committing acts aimed at building the evidential basis and justification for its positive and attainable objective statements.

A simple understanding of the nature of the burden of proof is a set of rules for the distribution between actors of their obligations to justify the presence of certain conditions. These rules are as follows:

1. Main (general) rule based logic to the current position of any dispute. Its meaning is that he who defends certain opinions must give his reasons. Pryminymo to proof, which means that anyone who puts a particular evidential thesis, should it prove.

2. The burden of proof, sometimes, can be moved on other subjects of criminal proceedings, including in the defense (and sometimes even on the subjects of criminal proceedings are not subject to proof, as are those that contribute to its implementation).

Regarding the possible shifting of the burden of proving the substantive facts, we can assume the following possible cases of: 1) generated when the evidence base in one way or another party provides an opportunity to nominate a strong factual assumptions. In this case, the burden of proof (refutation of this assumption) is moved to the other side, and 2) when adequate evidence base as one, and the other party has not yet formed, but on the existence of certain facts can be expressed by certain legal presumption in favor of either party. In this case, the burden of rebuttal of the presumption may shift to the opposite side, and 3) when the other party is in a stronger position objectively, is the best possible proof of certain facts.

Regarding the possible shifting of the burden of proof of facts that are procedural value, the example is the provision of Part 2 of Article 92 and st.139 CCP.

Key words: Criminal procedure of proof, the burden of proof, the burden of proof, responsibility, interest.

DROZDOV A.

PROBLEMS OF IMPLEMENTATION OF CERTAIN PRINCIPLES OF THE CRIMINAL PROCESS IN THE PRODUCTION OF NEWLY DISCOVERED CIRCUMSTANCES

The paper attempts to reveal the essence of the legal proceedings to revise judgments on newly discovered evidence through the prism of the implementation at this stage some of the principles of criminal proceedings. Analyzed, especially in view of the legal position set out in the decisions of the Constitutional Court and the European Court of Human Rights, the various approaches to understanding the normative content of such principles as the rule of criminal law, rule of law, access to justice and be bound by judicial decisions, outlined their structure. A brief overview of some general theoretical issues of the right and the forms of its implementation in the production of newly discovered circumstances.

Formulated scientifically sound conclusions and proposals for improvement of legal regulation and practice of application of the Criminal Procedure Code to regulate the production of newly discovered circumstances. For example, the author notes that the courts of first instance, appeal, appeal courts and the Supreme Court of Ukraine in the production of newly discovered evidence must observe, use, implement and apply the rules of criminal procedure legislation in the spirit of strict compliance with all the requirements of the rule of law and the practice of the European Court of Human Rights.

The study allowed the author to formulate a definition of the principle of legality as enshrined in the law defining, fundamental provisions according to which the court, the parties and other participants in criminal proceedings are obliged to strictly observe, use, implement and apply the rules of criminal procedural law in criminal proceedings. In this context it should be noted that the court parties and other participants in criminal proceedings in the production of newly discovered circumstances shall strictly observe, use, implement and apply the provisions of the Constitution, the Criminal Procedure Code and international treaties agreed to be bound by the Verkhovna Rada of Ukraine and other criminal acts procedural legislation.

The above analysis of the major doctrinal approaches to determine the content of access to justice and mandatory injunction and given the proper practice of the European Court of Human Rights suggests that access to justice and be

bound by judicial decisions should be provided procedural mechanism and the organization of the court and the relevant authorities to include a number of components: level arrangement of the judicial system, procedural order of the application for judicial review on newly discovered evidence, the organization of the courts of first instance, appeal, appeal courts and the Supreme Court of Ukraine regarding the acceptance of the application for judicial review on newly discovered evidence and the opening of criminal proceedings, judicial review of the appropriate authority Supreme Court of Ukraine, or request for review of the judgment on newly discovered evidence.

Key words: principles of criminal proceedings under the new circumstances level arrangement of the judiciary, the Constitutional Court of Ukraine, the Supreme Court of Ukraine, the European Court of Human Rights, the rule of law, access to justice and be bound by judicial decisions.

TKACHYOVA O.

DETERMINATION OF VIOLENT CRIME

The scientific article is devoted to the problem of determination of violent crime through the analysis of concrete conditions of people's life and the reasons of their changing. The author analyzes the causes and conditions for violent crimes committing. The most important factors of violent crime determination that exist in family and domestic and social spheres of society's life were considered. System reasons of violent crime against the person is the most complex relationship. It is such sort of complex phenomena and processes that mediate the social influence on the formation and modification of behavior. Among the most important reasons for the violent crimes in the family and domestic sphere was found the problem of domestic violence. Criminal violence is kind of an indicator of negative trends in the society. The nature and scale of the violence depend on the characteristics of economic, social and cultural development. The deterioration of living and quality of life in the country promotes criminal psychology. Deformations of social values

among youth have a significant influence on the psychology of violence development. Vagrancy and homelessness play the significant role in the reproduction of violent crime. Another factor in the determination of violent crime acts is alcoholism and anesthesia of population. In a scientific article the author has attempted to establish the main factors for the origin phenomenon of violence and commission of violent crimes in Ukraine.

Key words: determination, violent crime, factors, family and domestic sphere.

AIRIYAN K.

ASPECTS OF INTRODUCTION OF THE INSTITUTE OF CONSTITUTIONAL COMPLAINT IN UKRAINE.

Introduction of the institute of constitutional complaint is a very topical issue for our state. Consideration of constitutional complaints is one of the most popular procedures which bodies of constitutional jurisdiction of many foreign state utilize to protect human and citizen's rights and freedoms. The essence of the institute of constitutional complaint is a right of citizen to apply to bodies of the constitutional control with a claim to examine the constitutionality of power acts which in their opinion violate their rights and freedoms. Unfortunately, this institute has not found its reflection in Ukraine which can be explained by that the legislator does not want overload the Constitutional Court of Ukraine with such cases. At the same time it restricts possibility of citizens to protect their rights by national legal remedies, in particular in the Constitutional Court of Ukraine.

State bodies have certain authority for rights and freedoms protection by means of application to the Constitutional Court of Ukraine with constitutional petitions. In practice competent subjects of power apply very seldom to the Constitutional Court of Ukraine with constitutional petitions to protect citizen's rights and freedoms.

The situation concerning applications of citizens which in fact have a character of constitutional complaints is not adjusted. The Constitutional Court of

Ukraine refuses to open judicial proceedings even if these applications are legally grounded.

There is also a reverse side of this problem. In case of introduction of the institute of constitutional complaint in Ukraine the Constitutional Court of Ukraine can become a court of cassational instance.

We shall notice that natural and legal persons have a right to apply to the Constitutional Court of Ukraine only within the framework of official interpretation of the Constitution and laws. However, due to the notion of "discretional jurisdiction" in case of application of natural and legal persons to the Constitutional Court of Ukraine there is a possibility to recognize provisions of law as unconstitutional during consideration of specific constitutional application.

It is becoming more and more topical the issue of load of the Constitutional Court of Ukraine in case of introduction of the institute of constitutional complaint which will influence quality of decisions of the Constitutional Court of Ukraine.

It is necessary to unify efforts and to solve this problem to a certain balance. The Constitutional Court of Ukraine is one of the top points of the judicial system in Ukraine. It is not a cassational instance in civil, criminal or administrative cases, but a protector of fundamental rights, freedoms and interests of person and citizen.

The issue of introduction of the institute of constitutional complaint in Ukraine is complicated and demands a thorough research of theoretical principles and historical experience and needs regulation of some aspects concerning to authorities of court and procedure due to observance.

Key words: constitutional appeal, institute of constitutional complaint, Constitutional Court of Ukraine

VEHERA V.

ON THE ISSUE OF PAYMENT OF WAGES AT A RATE LOWER THAN THE PRESCRIBED STATUTORY MINIMUM

This article is devoted to issues related to salaries of employees. Analyzes the laws and views of scientists on this issue. It is noted in Charge of the timely payment of wages and of not lower, from established law.

An extend item 1^1 article 41 The Labour Code of Ukraine not only to the legal entity, but also to their deputies, heads of structural subdivisions, their deputies, chief accountants and their deputies, that the whole governing its composition, since they:

1) formulate policies of a legal entity;

2) direct the activities of its business units and manufacturing units to (a) achieve high economic and financial performance, (b) ensuring increased productivity, (c) the introduction of new technology and innovative methods of management, (d) improving the economic mechanism;

3) provide (a) the realization of the objectives of economic indicators, (b) performance of financial obligations to the state budget, suppliers, customers and banks, (c) the use of funds for the intended purpose;

4) resolve financial and other matters, and as a consequence – to create conditions for compliance with applicable wage conditions.

The appropriate approach should be reflected in the issue of full liability of officials responsible for the late payment of salaries for more than one month, which led to compensation for violation of terms of payment, and provided that the State and local budgets Ukraine, budgets, legal state-owned entities have no debts to this company.

According to paragraph 1^1 of the article 41 The Labour Code of Ukraine entity vested with disciplinary rights in respect of the head are the owner or authorized body. An analysis of law enforcement, this approach significantly reduces the benefits of the mentioned regulations. Indeed, in many cases, and represented by the same person or employer is as close as possible (eg, with family, personal or other out of service close relationship). The way out of this situation is the empowerment of the respective right capability State Inspection of Ukraine on labour for state supervision and control over the observance of

legislation on wage enterprises, institutions and organizations regardless of ownership, type of business, management, individuals who use hired labour and work of individuals, the Council of Ministers of Crimea, executive authorities and local governments.

***Key words**:* employee, owner, employer, salary, pay, responsibility.