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RABINOVICH P., RATUSNA B.

GENERAL THEORETICAL PROBLEMS OF THE RIGHT TO ADEQUATE PROOF IN THE UKRAINIAN JUDICIAL SYSTEM (IN THE LIGHT OF THE PRACTICE COURT OF STRAZBURG)

This article studies the proper establishment of the actual circumstances of the case in Ukrainian court enforcement in accordance with the requirements of the European Court of Human Rights. There has been provided a strong analysis of the domestic compliance with the requirements of the ECHR on the implementation of the adversarial trial model, equality of opportunities for the parties to the proof date evidence on which the court enters the judgment and motivations. We consider each of these requirements in detail for the various types of domestic proceedings. It is noted that the state of compliances in Ukraine today is insufficient and does not correspond to the ECHR requirements. In particular, it is pointed out that the economic and administrative processes of the court may collect evidence on their own initiative, making these types of processes so to say less "competitive" if compared to the civil and criminal proceedings. The important drawback regarding the requirements of the arms equality in the evidence is the legal limitation of the number of persons being in a criminal defense case. Other kinds of process in the absence of the guaranteed legal aid do not vouch for the parties participating in the "fight" equality, which is a significant obstacle to the introduction of effective equality of the parties in evidence. In Ukraine the requirements are consistent with the positions of the ECHR lawfully, but in practice they do not always adhere to. The problems of judicial decisions motivation realization in Ukraine are as follows: 1) the lack of legislative provisions as requirements for the independent judgment in almost all the procedural codes (apart from the Criminal Procedural Code of Ukraine); 2) the shortcoming of the motivation scope and content in the practical enforcement. There have been stated the perspective directions of the national procedural law improvement regarding the legal proof according to the European standards.

To improve the situation the several points have been proposed:

– to deprive the court of law of collecting the evidence on its own initiative in the economic and administrative processes;

– to modify Art. 45 of the Criminal Procedural Code of Ukraine "Defender" with the second paragraph stated in the following words: "Other experts in law, who are entitled by law to provide legal assistance in person or on behalf of a legal entity, can be perceived as the defenders. In cases and in the manners prescribed by this Code, the defender's role can be given to the close relatives of the accused, convicted, acquitted, as well as his guardians or custodians";

– to supplement the Procedural Code of Ukraine with such grounds for a decision cancellation as justification of decision with inapplicable evidence and improper judgment motivation;

– to reeve motivation as a separate requirement to secure the judgment in Art. 213 of the Civil Procedural Code of Ukraine, Art. 159 of the Code of Administrative Procedure of Ukraine and Art. 83 (1) of the Commercial Procedure Code of Ukraine.

Key words: appropriate judicial proving, adversarial judicial proceedings, applicability of evidence, suitability of evidence, reasoning of legal judgments.

PANKEVYCH O.

PROHIBITION OF DISCRIMINATION: SOME THEORETICAL AND PHILOSOPHICAL AND LEGAL ASPECTS OF INTERPRETATION (BASED ON THE EUROPEAN COURT OF HUMAN RIGHTS)

This article attempts to make a general theoretical and philosophical and legal analysis of the practice of the European Court of Human Rights on protection of human right for non-discrimination.

Particular attention is paid to the need of considering differences between communitarian and liberalistic interpretations of legal categories, including category of discrimination.

Significant attention is paid to the coverage of features of the Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (which make it somewhat unique in the system of the Convention mechanism to protect human rights and freedoms) and Protocol No. 12 thereto.

The publication notes that the requirement of non-discrimination (prohibition of discrimination) is the one of the components of general legal principles of equality, which, however, is not limited by the definite requirement itself, as the need for differentiation of legal regulation is also considered as something that contributes to providing the actual ("full and true") equality.

Thus, the principle of prohibition of discrimination may be regarded as a formaland legal implementation of the principle of equality that is much wider in scope as one of system fundamentals of the constitutional and legal status of human and citizen in the modern states of Europe.

It is noted that in numerous precedents of the European Court of Human Rights (particularly in cases: "Relating to certain aspects of the laws on the use of languages in education in Belgium" (23.07.1968), "Thlimmenos v. Greece") 06.04.2000)) the concept of discrimination gained a clear "dual" interpretation as a) different treatment without any objective and reasonable justification for the persons who are in relatively similar situations, and b) equal treatment for the persons that are in completely different situations.

However, this approach is not the Court's own invention, but a certain formalization of philosophical and legal provisions, expressed by Aristotle in "Nicomachean Ethics" (1131a 10).

"Cut" wording of Article 14 of the Convention, which is limited to ensuring non-discrimination of exercising the rights and freedoms set forth in the Convention", which has clearly showed its incompleteness in practice of its application, caused a need of adoption of the Protocol No.12 of the Convention, which in Article 1 established the general prohibition of discrimination.

At that, established primary interpretation of the term "discrimination" in the Court decisions remained unchanged.

Based on the performed analysis of practice of the European Court of Human Rights on cases of prohibition of discrimination a general conclusion is made, that postulates of so-called liberal communitarianism as a result of a kind of convergence of liberal and communitarian ideologies are the main philosophical basis for modern decisions of this European Court. This, in turn, can be considered a reflection of relevant trends in the development of modern Western ethical and legal and political and legal thought in whole.

Key words: prohibition of discrimination, the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights, liberalism, communitarianism, liberal communitarianism

HUDYMA D.

SOME ISSUES OF THE RIGHT TO LEGAL ASSISTANCE IN CRIMINAL PROCEEDINGS (IN THE LIGHT OF EUROPEAN STANDARDS)

The article deals with some problems of enjoyment of the rightsto legal assistance in criminal proceedings in the light of European standards.

It is noticed that international, particularly European, human rights standards do not regulate imperatively who can be the legal defender or representativein a court,what is the scope of his/her procedural powers, and at what stage of the proceedings the person should be allowed to benefit from legal assistance. Attention is drawn to the lack of consistency of the Ukrainian authorities in regulation of various aspects of the right to legal assistance.

In the light of the right to legal counsel the author examine the decisions of the European Court of Human Rights in such cases as«Imbrioscia v. Switzerland», «Artico v. Italy», «Airey v. Ireland», «Pakelli v. Germany», «Shabelnik v. Ukraine», «Zagorodniy v. Ukraine», «Pishchalnikov v. Russia», «Salduz v. Turkey», «Yoldaş v. Turkey», «Dayanan v. Turkey».

Such elements of the right tolegal assistance as the right to choose counsel and to waive him/her are considered in the article. On the basis of the European Court of Human Rights practice some particular properties of the waiver of legal assistance are established: voluntariness, unambiguousness, awareness andreasonableness.

Key words: the right to legal assistance, the right to defence, the right to choose counsel, the right to waive counsel, the European Court of Human Rights.

PILIPCHUK V., DZEBAN A.

THE GLOBAL CALLS AND THREATS OF NATIONAL SAFETY IN AN INFORMATIVE SPHERE

The article reviews the main geopolitical changes in the information sector, development trends information space at global, regional and national levels, key issues and emerging challenges and threats to national security in the information sector.

The research is based on the complex application of research philosophy, general and applied levels of interconnection and complementarity.

Pointed out in major geopolitical changes in the information sector, including the rapid transformation of the information space western states into a single global information space with a dominant role in the control of information streams of United States and the EU; enhance spatial interdependence of states due to the global information infrastructure based on the Internet; significant expansion of military information space; reinforcement processes associated with the development of partnerships and global information counter, expanded the Russian Federation; converting the information space of global, regional and national levels on one of the main areas of geopolitical confrontation.

Substantiated the importance of information security in the context of human society and the state information counter problems of violence, information operations and global information confrontation (war).

The main sources of external information security threats Ukraine, including the activities of foreign political, economic, military, intelligence and information structures; desire of some countries to limit domination and interests of Ukraine in the global information space; aggravation of international competition for the possession of information technology and resources; increasing technological gap between the leading nations of the world and increase their ability to counter create competitive domestic information technology; activity space, air, sea, land and other technical means (types of) intelligence of foreign countries; development of a number of states concepts of information warfare.

The grounded key actual and potential challenges and threats to information security of Ukraine, including the existence of problems of formation and implementation of adequate public information policy; lack of effective information-analytical support of the leadership of the state and public authorities; attempts to interfere in the internal affairs of Ukraine from foreign countries by means of media and communication; Use of the information space by foreign States to information or military aggression; spread negative information and information technology's impact on the human mind; development of new types of foreign powers information weapons and weapons of cyber character; dependence of critical national information infrastructure from foreign manufacturers of high-tech products; lack of priority of the national software; low competitiveness of domestic high-tech industries of information technology; manifestations of unauthorized access to personal data and information resources of state and local governments; spread offenses, terrorist, separatist and other criminal offenses in the area of information; discrepancy legal liability modern challenges and threats to information security; lack of effective democratic control over the activities of information security, protection of the national information infrastructure and information space Ukraine.

It is concluded that international cooperation Ukraine in the field of information security should be based on a combination of national interests in the area of information, clear understanding of the real and potential threats and

challenges, methods and means of prevention, detection and suppression, as well as the proper legal support.

Key words: national safety, informative sphere, informative safety, calls and threats, informative opposing.

YAKOVIYK I.

THE EUROPEAN COUNCIL: EVOLUTION OF LEGAL STATUS

The article is devoted to the evolution of the place and the role of the European Council in the institutional mechanism of the European Union. The reasons of the establishment of the new body are analyzed; the evolution of its legal status is observed; the ways of ensuring legitimacy and its role in the regulation of the European Communities activities are determined. It is noted that it took the integration unit about thirty years to formalize the legal status of the European Council.

The European Council is the highest political body empowered to make such crucial for the integration decisions as the questions as for the approval of the EU reforming directions; creation of new and change of the legal status of already existing institutions and organs; resolution of personnel issues and the questions as for the institutions and bodies of the Union location; decisions as for the circle of the countries to grant the right to join the Union and time boundaries for their membership; long-time Union budget planning; decisions as for the list and content of the bailout actions, and so on.

There were changes in the powers of the European Council's legislation sphere during integration development process: if earlier it produced documents called 'conclusions' which were political documents, but today it can make legal acts in the form of 'decisions' which, truly said, can not be directed at the unification or harmonization of the Member States law. Besides, the Lisbon Treaty established direct prohibition for the European Council to participate in the legislation process of the Union. The article states that the prohibition for the

European Council to participate in the legislation process is not consistent with its right to make decisions by which the founding treaties are amended and clarified. Following this, the stated prohibition should be interpreted as unreasonableness of the European Council participation in the legislation process in the sense of adoption of new and renewal of the current (secondary) legislation of the EU, which does not exclude its right and even duty to play the key role in the adoption and renewal of the 'constitutional' legislation of the EU.

The analysis of the powers of the European Council and the practice of its interaction with the other European Union institutions allows to conclude that in spite of its status, it has always played an important role in the realization of the principle of institutional balance.

As the result of the analysis of its role and place in the institutional mechanism it is concluded that gradually the European Council is acquiring the status which conventionally allows to compare it with the Head (President) of the national state.

Key words: the European Union, the European Council, the EU institutional mechanism.

YEVGRAFOVA YE.

ISSUES OF LEGAL ORGANIZATION OF STATE POWER IN THE CONTEXT OF CONSTITUTIONAL REFORM IN UKRAINE

The article highlights the most important issues of legal organization of public, particularly state power in the context of carrying out constitutional reform in Ukraine. Basic attention is concentrated upon the analysis of implementation of the principle of state power division into legislative, executive and judicial power as manifestation of the rule of law.

Emphasis is put on a fact that principle of state power division in political system of Ukraine is certainly acceptable in the form of constitutional framework. However, despite provision of its definition in the Fundamental Law it was not

consistently realized in organization of state power. Therefore, now the task of substantial reforms in public power including state power and local self-government is extremely relevant in society and state as well. In this regard, special attention is paid to consideration of the system of executive power. Multiple attempts to reform it were not successful.

Recognition of the Verkhovna Rada of Ukraine as the only one body of legislative power in a state does not testify absence of certain difficulties, unsolved problems and crisis situations in its activity. The author considers that reforms in the Ukrainian parliament are not easier than reforms in the executive and judicial powers. However, there is some specificity in this matter including peculiarities of the Verkhovna Rada composition formation, creation of parliamentary majority (coalition) by results of elections, etc. To a large extent, condition of parliamentary system in Ukraine depends on availability of established and mature forms of democracy, institutions of civil society.

Solution of issue as for system of executive power bodies is much more complicated. The Constitution determined only the basic parameters of their functioning taking into account a status of Ukrainian government and local bodies of executive power. It is possible to assert that legal organization of executive power is finished at that. Beyond the mentioned constitutional parameter there is a significant set of state bodies compared to central bodies of executive power (ministries, state committees). In such a way it is formed rather excessive centralization of executive power bodies. Hereby, local self-government stays aside. Therefore, it is underlined in the article that reforms of executive power must be implemented by means of its decentralization, transfer of authorities from central, local and territorial bodies of executive power to local self-government.

Analysis of judicial system testifies incompleteness and inconsistency of reforms. Instability of judicial legislation, especially concerning organization of judicial bodies, availability of bodies which control their activity, formation of the unified constitutional and legal status of judiciary and such things made a small

contribution to strengthening an independence of courts, administration of objective, impartial and fair justice by them.

***Key words*:** legal organization, constitutional reform, legislative power, executive power, judicial power.

GONCHARENKO V.

LEGISLATIVE BODIES OF UKRAINE DURING THE NEW ECONOMIC POLICY

In the 1920s three-tier system of higher legislative bodies functioned in the UkrSSR, namely the Ukrainian Congress of Workers', Peasants' and Soldiers' Deputies, the Ukrainian Central Executive Committee (Ukrainian: ВУЦИК – VUTsIK), the Presidency of VUTsIK.

The legal status of these bodies in the analyzed period was determined by the USSR Constitution 1919, the same Constitution in edition 1925, the USSR Constitution 1929 and some other legal acts.

Ukrainian Congress of Soviets occupied a leading place among the central authorities of the republic. Analysis of practical activity of Ukrainian Congress during the NEP period testified that the Congress has adopted a number of legal normative acts. So IX Congress of Soviets (1925) adopted a resolution "On amending Constitution of the Ukrainian Soviet Socialist Republic." XI Ukrainian Congress of Soviets (1929) adopted the Constitution of the Ukrainian SSR in 1929. Ukrainian Congress of Soviets took some other important normative acts. In general, the number of acts adopted by the Ukrainian Congress of Soviets was small. This is due to the fact that the Republican Congress of Soviets acted primarily as a general policy of the Ukrainian SSR state body. Is why most of adopted by the UkrSSR Congress of Soviets acts were called resolutions or decisions. Based on these acts content they should be considered as legal non-regulatory policy instruments. These legal acts contain provisions which define the

program of activities of governing bodies of the UkrSSR after the congress, including in the field of law-making.

Ukrainian Central Election Committee legislated in the country in the period between meetings of Ukrainian Congress of Soviets. Its members were elected by the Congress of Soviets of the UkrSSR coincident convocation. Legislative powers of VUTsIK carried them during the breakout sessions, which were of a periodic nature. Analysis of VUTsIK activities gives grounds to assert that the legislation took quite a significant place in it's work. In this case, the codes of the UkrSSR occupied the central place among legal acts adopted during the VUTsIK sessions. So, UCEC adopted Labor Code of the Ukrainian SSR, the Land Code of the Ukrainian SSR, Code of the Education of the Ukrainian SSR, the Family Code of the Ukrainian SSR, the Forced Labor Code of the Ukrainian SSR.

VUTsIK carried out legislative powers also in the form of approval during sessions legislative acts, adopted by the Presidency of VUTsIK during the intersessional period.

An important form of exercising VUTsIK its competence was administrative, policy making (top management). Legal expression of VUTsIK's top management activity were the acts, which were often called the resolutions, decisions. It was a non-normative legal acts of prescriptive.

Following legislative body after VUTsIK was Presidency of VUTsIK. Its members were elected by each new composition of the Ukrainian Central Executive Committee. Legislative activities of the Predisency of VUTSIK was quite eventful.

During the period of the New Economic Policy (1921-1929) as a result of functioning of the three-tier system of the UkrSSR legislative bodies an extensive legislative framework for effective governmental, economic, social and cultural development in Ukraine was established.

Key words: Ukrainian Congress of Soviets, VUTsIK, Presidence of VUTsIK, legal acts, the New Economic Policy (1921-1929).

RUM'IANTSEV V., SEREDA O.

INDEPENDENCE AND LEVEL ARRANGEMENT OF THE JUDICIARY FOR JUDICIAL REFORM IN 1864 (UP TO THE 150TH ANNIVERSARY OF THE JUDICIAL REFORM OF 1864)

The paper identifies the main problems of the formation of the judicial system of the Russian Empire on the principles of independence and instantsiynosti. Analyzes the experience of their decision during the eighteenth – the second half of the nineteenth century. Attempts to reform the judicial system in this period were fragmented. Court remained bureaucratic institution and the judicial system – a complex and confusing.

Only judicial reform in 1864 and consistently democratic decided these issues. One of the important achievements of the reform was the separation of the judiciary from the administration. Independence of the judiciary ensured the reduction of courts; institutions appeal and appeal court decisions; special status of judges. The last was a special order for dismissal of judges and dismissal; legal strengthening of judicial authority and material resources.

Instead of a complex system of different judicial institutions launched a new model of the judicial system. The judicial system reform by 1864 acquired the following form. Lowest level in the system of ordinary courts became the District Court, which considered in the first instance civil and criminal cases, incompetent magistrates. Chambers were defined as the trial (in the order they are considered special proceedings cases of public office and offenses), and appeals. On the one hand their jurisdiction included cases on complaints and protests against judgments of district courts. The Senate was transformed in the supreme Court of Cassation authorized to oversee the protection of precise and unambiguous force of law on all his court.

Key words: judicial system, judicial independence, level arrangement of the judiciary, judicial reform in 1864.

YARMYSH A., KIRICHENKO V.

THE EXTERNAL FACTORS IN THE CONSTITUTIONAL CONSTRUCTION

The theses consider world experience using external constitutional models in formation of national and legal systems.

The world is not homogeneous. In the historical process different ethnic groups moved not simultaneous but in their own way finding a fundamental cultural specificity. Someone was the first in cutting the way for progress, someone used the experience of more successful neighbors. However, by the XXth century the transnational financial oligarchy armed with the idea of world domination starts to rebuild the world. Imperialism dividing the nations and creating world wars did unite humanity, leading it to unity and bringing it beyond national existence. This process allowed R. David to say that the world has become united and it is impossible to dissociate itself from the other states, international cooperation is necessary.

Japan's experience demonstrates two unique cases of using Western constitutional models. Both times it happened under external influence, although the quality of impact was different. For the first time geopolitical circumstances forced the nation to self-refer to the constitutional process. The second time, after the capitulation, nobody asked the Japanese and occupational administration chose the direction of constitutional development on its own leisure. Various circumstances led to the emergence of constitutions, as a result a victory of Western political and legal thought, especially the German one.

Another example of forced model’s extension of constitutional and political systems of one countries to others is experience of Germany, which has lost two wars one after another. It is significant that Germany itself, which was a model for Japan, had to become a state, receiving its basic law from outside.

Processes of globalization, democratization and informatization take place in modern world. These processes determine the trend towards harmonization of

national legislations and international law in order to ensure a reasonable combination of national and international interests, the development of common criteria and norms of civil society and state of law.

Key words: constitution, basic law, external influences, Japan, Germany, the constitutional process, the legal thought.

LETNYANCHIN L.

RESTRICTION OF PASSIVE SUFFRAGE: THE PROBLEMS OF CONSTITUTIONALITY

Actuality of the theme pays attention on the problem of lustration in today's government. This problem appears due to the requirement of civil society to have radically updated and purified government. The activation ofthis problem caused because of the constitutional uncertainty in sphere of criminal record. The Law fixed the fact that criminal record is a reason of restriction the right to be elected in general elections of the President of Ukraine. This reason becomes practically important in connection with appeal which Central election commission made to the Constitutional Court of Ukraine. The question of this appeal were official interpreting of the state of article 92, part 1, clause 20, article 103 part 2 and 6 of the Constitution of Ukraine and also article 9, part 2 of the Law «Election of the President of Ukraine».

The article shows us the problems of restriction in realization political rights and freedoms, the limits of legislative restrictions in realization passive suffrage. Also, there we analyze the legal position of the Constitutional Court of Ukraine and the practice of the European Court of human rights in the context of their possible influence on solving this problem. Special attention is paid to criminal record as a criterion for restricting the right to be elected. To sum up, we want to say that establishing additional requirements by Law for the subjects of government is acceptable. They are directed on formation the proper corps of governmental service and public opinion about the credibility of the government

and also on its authority and legitimacy in society. Having a criminal record is not compatible with the achievement of these objectives but its domestic formulation and application are unnecessarily wide. That is why it needsgreater differentiation depending of the kind and gravity of the crime.

Key words: political rights and freedoms, passive and active suffrage, restriction of election rights, criminal record.

MARYNIV N.

TAX ACCOUNTING AS A WAY TO IMPLEMENT TAX CONTROL

The article is devoted to topical issues of tax control, tax accounting, and defi nition of their place in the system of the legal mechanism of taxes. Organization of control is an essential element of fi nancial management of public funds, because such control entails public responsibility. Due to the obligation to pay taxes economic basis for the state activity for tasks and programs of various areas is promptly and fully established. Tax control can be defi ned as a function of state management of the tax system. Tax control is a system of measures which are taken by controlling bodies to monitor the correctness of calculation, completeness and timeliness of payment of taxes and fees, as well as compliance with legislation on the regulation of cash of settlement and cash transactions, patenting, licensing and other legislation, compliance which is monitoring by the controlling bodies. The following stages of tax control can be distinguished: a stage of information work with taxpayers; operatively-search activity; recovery of tax arrears; seizure of assets; court procedures; appeal. As part of the tax obligation can be distinguished: the duty of taxation, the obligation to pay tax or fee, the duty of tax accounting. All these elements are closely linked and pursue a single purpose – the timely and full reception of amounts of tax or fee to the appropriate budget or off-budget state trust fund. Tax account has a priority in compare with the accounting. The following goals should be achieved as a result of control activities: ensuring tax compliance by entities which implement the tax obligation or ensure its

implementation; prevention of violations in the tax area; detect violations of tax laws and the application to the perpetrators of appropriate measures of legal liability. One of the forms of tax control is a tax revision, the essence of which is to carry out the tax authority a set of measures which are intended to verify the correctness and completeness of taxes and fees to the appropriate budgets, and compliance with other standards legislation on taxes and fees. Objects budget and fi nancial control can be classifi ed according to the following criteria: the source of fi nancial resources (budget, off-budget funds, loans, etc.); by legal form (public authorities, enterprises of any form of ownership, banks, etc.); the nature of the audit activity (objects of prior or current control).

Key words: tax, tax control, tax accounting, tax documents.

GOLINA B.

CONVICTION AND SOCIETY

The Criminal Code of Ukraine contains Section XIII - "Criminal Record". Criminal record is an element of control for such concepts as: institute of criminal record; criminal record as a fact of convicting a person for the crime he committed; criminal record as the legal status of the convict; state of criminal records in society; the public mind concerning convicted persons. The article examines the content and purpose of mentioned structures, their relevance to contemporary state needs in fighting crime. Institute of criminal record – is a set of rules provided by the Criminal Code of Ukraine, which regulates relations arising in the implementation of criminal responsibility: the moment of criminal record emergence, the timing of its course, the conditions of its expunging and canceling, its general social penal consequences. Despite a number of legislative imperfections, within the strategy of intimidation it serves to achieve and maintain the goals of punishment.

Conviction as a fact of convicting a person to criminal punishment may be considered from different points of view: as a happening of biography, sometimes

of a personal "criminal career", or the moral reproach of the society, or the latter's attitude towards the convict. For the particular person a criminal record may result into unfavorable consequences both on common and social levels and complicate his adaptation.

Conviction as the legal status of the person indicates the existence of her relations with the state that are filled with certain content. The scope of rights and obligations, restrictions of individual freedoms is being defined. The state, on the one hand, distances itself from persons who have a criminal record, and on the other hand, seeks to correct and to reintegrate them into society, which is associated with considerable objective and subjective difficulties.

The concept of "obtaining criminal record" includes quantitative and qualitative characteristics of the convicts' entity in the country. During the period from 1991 to 2013 there was convicted more than 4 million people, i.e. almost every 10^{th}-11^{th} Ukrainian citizen has received a criminal record. 70% of them had not been previously condemned. The increase of criminal potential in the country reflects harmfully on the material and spiritual life of the society.

Concerning the public opinion, as a demonstration of mass consciousness towards the criminals, the respondents' views differ: from the liberal ideas of humanization to more stringent treatment, as evidenced by a number of resonant cases in Ukraine. The fear of crime among the population becomes constantly present factor that leads to further crime latentiation and victimization.

There has been proposed the following means to reduce the impact of criminal records on society: maximal reasonable decriminalization, reducing crime and the condition of criminal records, legislative regulation of its general social consequences, wider use of discretionary methods for responding to a range of socially dangerous manifestations, the adaptation of convicts' legal status to the European standards.

Key words: criminal record, the institute of criminal record, the fact of conviction, the consequences of criminal record, the condition of criminal record, consciousness, societ.

MOSHAK G.

INVESTIGATION AND PREVENTION OF POLICE OFFICERS' ILLEGAL ACTIONS IN THE WORKS WRITTEN BY PROF. T. FELTES (GERMANY)

The objective of this paper is to compare the main features, factors and measures of prevention of the illegal use of force (or synonymic 'use of violence') of German and Ukrainian police. The results of the comparative study of illegal violence by police officers in the works written by Professor T.Feltes and the works of Ukrainian scientists, the determination of common features and peculiarities give reasons for using the German progressive experience.

2087 cases out of 2417 ones concerning the illegal violence of police officers were suspended by prosecutor's office in Germany in 2011, which makes up to 95%. Only 5% of cases were taken to the court. The number of corresponding cases in Ukraine in 2012 was two times less and made up to 2.6%. T. Feltes specifies the main factors of illegal use of force by police officers: fear of conflict escalation; threat to the authority; influence of the subjective evaluation of the confrontation situation. The police officer's inner stress is caused by the fear of the search results of his working place, computer, as well as by the fear of the control of his phone calls and official and personal correspondence from his official or personal computer. Under the influence of inner stress the major part of the police officers gradually becomes indifferent to problems at work that arise from the illegal use of force by their colleagues, and these problems are not reported by them.

In 2012 every fiftieth Ukrainian suffered from police officers' tyranny and torture in Ukraine. The main reason was a mutual concealment of crimes by the police and the government, which gave rise to massive protests of the citizens and outbreaks of war against the police. Corruption and the opportunity to extort money from the affected victims turned the unjustified violence into a source of

income. The lack of the system of effective investigation of cases and objective comprehensive statistics on the extent of the phenomenon contributes to the prevalence of illegal violence in the internal affairs authorities.

T. Feltes reasonably concludes that the unity of the police ranks and the behavior of their leaders have a strong impact on the employees. He draws attention to a peculiarity that also applies to Ukrainian police. Police officers think over for several days as for what to report about the incident, realize its scale and effects, form their personal point of view on it and refrain from the statements in order not to take the risk of turning from the witness into the suspect. At the same time, the complexity of police work gives the opportunity to hide the incidents and the responsibility for them in order not to worsen the situation in the subdivision. T. Feltes emphasizes that the 'wall of silence' and corporate spirit contribute to the police officers' violence. The scientist describes a sequence of actions in the mechanism of violence emergence. The everyday opposition to law breakers makes the use of force a common police activity. Prosecutors and judges should first of all get over the reflex of trust to the employee and then trust the citizen more than the police officer in order to accuse the latter of the crime.

T. Feltes reasonably believes that illegal violence cannot be rooted out only by punishing the guilty police officers. The use of Professor T. Feltes's studies in Ukraine should shorten the time for implementation of European standards of police work.

Key words: police, police, illegal use of force, to prevent police violence.

TITKO I.

THE UNITY OF THE LEGAL NATURE OF THE INSTITUTE OF BARGAINS IN PRIVATE AND PUBLIC SUBSYSTEMS OF LAW IN UKRAINE

The article is devoted to the institution of bargains. The common and distinctive features of bargains in the private and public subsystems of law in

Ukraine have been analyzed. The material is discussed through the prism of the institute of bargains in the criminal procedural law of Ukraine, namely, a settlement agreement and a plea bargain. The author provides the classification of bargains, analyzes the characteristics of certain groups, in particular: the substantive and procedural legal bargains, civil procedure and criminal procedure bargains. It is proved that the substantive and procedural legal bargains have a number of common and distinctive features. The unifying factors are the reciprocity, voluntary, mutual benefit, equality counterparties, controlling and certifying the participation of the state. The distinctive features are the following: the prevalence in different subsystems of law, the ratio of the general procedure for the construction of relationships, the degree of freedom of contract, the purpose of deal, the nature of mutual benefit, the number of parties, the name. The bargain in civil procedure and criminal procedure should be allocated as the certain types of procedural law bargains. The comparison also provides an opportunity to confirm as a fact relationship of these institutions, and to establish a number of fundamental differences. The enlargement of the scope of private interest in the criminal procedure law of Ukraine and the convergence of this branch of law with the classical branches of private law are demonstrated.

Key words: bargain, private interest, plea bargain, settlement agreement, criminal procedural bargains.

BUDETSKIY R.

FEATURES OF MANAGEMENT JUSTICE IN THE UNITED STATES OF AMERICA ORGANIZATION AND LEGAL ASPECT

The article is devoted to the scientific analysis of the functions of the bodies of justice of Ukraine. One of the conditions of the scientific organization of the state administration is the functional approach to the determination of the administrative loading of every link and element of this system. It allows on every stage of the state development and in certain conditions to find the most expedient

and perfect distribution of the administrative loading on every element of the system that in its turn stabilizes and improves all the state system. They are determined, firstly, by the certain limits of the functional purpose in the mechanism of management, secondly, by the insufficiently effective reforming of the existent system toward expansion or decline of their functional loading.

That is why, one of the main task having the scientific and practical value for regulation of bodies of justice appointment is the investigation of their function. Such approach is the purpose of the presented publication.

In the article it is proved that bodies of justice of Ukraine execute the special, inherent only in them functions. But it is necessary to focus attention on that functional directivity of bodies of justice is inexhaustible.

It can be explained by that bodies of justice come forward as a leading legal department not only in the structure of the executive power but also as the core element of the legal providing of the interdepartmental, interauthoritative and international interaction.

The scientific thoughts of the leading juriprudents on this problem, in particular, such as: V. Averiynov, U Bitiak, V.Garashchuk, V. Bogutskiy and others have been presented by the author. Legal regulations of the Ministry of Justice of Ukraine functioning have been considered.

In the article it is proved that, from one side, bodies of justice are directed to the performance of the general administrative functions characteristic for all executive bodies, and , from the other side, the inherent only in them functional loading . It became the basis for affirmation that the structure and functions of the government body are interconnected: from one side, the absence of one of these categories eliminates the other one, from the other side, it is introduction of changes in one of them leads to the changes of the other one.

By the author it has been invesigated as general-admiministrative functions of the state power, in particular, such as : integrating, regulating, motivating, control, uniting, repressive and stabilizing ones so specific functions, inherent to bodies of justice such as functions of the providing of the single legal space of the

country and providing of the functional interaction of the bodies of justice of different levels, functions of the right to powers providing, the right to certificate , law-enforcement and right to registration and so on.

The main conclusion of the publication is that though in the Ukrainian society and legal scientific sphere it is quite difficult to follow the the world tendencies of reformation of relations of the authorititive-administrative character , and this, in it is turn, brakes carrying out of the state and legal reforms, the institute of justice administration experiences the difficult stage of the formation and expansion of the authorititive-functional powers.

***Key words*:** management of USA justice, USA Department of justice, U.S. attorneygeneral, U.S.solicitorgeneral.

GILYAKA O.

LEGAL DOCUMENT: FEATURES AND LEGISLATIVE REGULATION

In a society constantly creates and operates a large number of different form and content of documents. From workflow depends on the efficiency of institutions, enterprises and firms.

That is why it is important to study legal documents both scientific and practical points of view. First of all, it is a study of the functional relationships of legal documents with other means of legal regulation that will help resolve many disputes decision and action legal documents, specification of the functional purpose of different types of legal documents.

Legal information may be limited to official documents: texts of laws and regulations, court decisions different instances, with or without such comments. This information may also consist of lighting system management in the field of positive law by sector, by type of cases or on specific institutions or issues. Most lawyer have to go at once to all types of primary sources. It uses codes, guides, official reviews or reviews developments in the private sector, general or special

character. He studied the work of theorists and practitioners, publications in large volume or collections of established forms and sample documents.

Document - recorded on a physical medium the information is valid, is the main proof of a fact in dispute resolution in the courts. All procedural documents by type of information can be divided into two groups. The first section includes documents containing evidence and information necessary for a complete, thorough and objective consideration of the case. The second group includes documents created by the competent authorities in the exercise of its activity after hearing.

A large number of documents, which forms a significant amount of information, necessitate the formation of legal methods of processing information. In today's world an important role in deciding whether computer perform information processing technologies to generate a database of legal documents.

Legal document – recorded on a physical medium disclaimer that legally binding, is the main proof of a fact. Current legislation provides clear requirements for the form and content of legal documents, specific types used in a particular case. Legal documents by type of information can be divided into those that contain information and evidence necessary for a complete, thorough and objective consideration of the case and those established by the competent authorities in the exercise of its activity after hearing.

Key words: legal document, information, database, register.

KALINICHENKO YU.

THE ISSUE OF DEFINING THE GROUP AND DIRECT OBJECTS OF DELIBERATELY FALSE REPORTING CRIME (ART. 383 OF THE CRIMINAL CODE)

The article is devoted to the problem of defining the group and direct objects of deliberately false reporting crime. The author pays attention to reviewing scientific approaches to constructing the group object of crime foreseen by Art 383 of the Criminal Code whilst defining the general and generic objects of crimes

against justice. Considering the critical analysis of advantages and disadvantages of scientific approaches to this issue the author proposes to define the group object for the sort of crimes that include deliberately false reporting crime as social relations, which ensure receiving credible evidences and the establishment of the objective truth. In addition, the suggestions on the system of crimes with the same group object have been outlaid.

The direct object of deliberately false reporting crime has been analyzed in detail. Having remarked the polyobject nature of the studied crime, the author focuses on considering the main direct object. On the basis of setting the structure of social relationship protected by Art 383 of the Criminal Code it has been concluded that the main direct object of the considered crime appears to be social relations that ensure the bodies of pre-trial investigation, prosecutor's office and court receiving credible facts of crimes and evidences along with establishing the objective truth in criminal proceedings. It has been stated that the damage caused to the mentioned social relations is being made by breaking social ties between its subjects due to the external impact of individuals and legal entities that don't take action in accepting and registering crime reports.

***Key words**:* justice, deliberately false reporting crime, group object of crime, direct object of crime, structure of the object of crime, mechanism of making damage to the object of criminal legal protection.