Доповідь Президента Національної академії правових наук України В.Я. Тація про основні результати діяльності Академії у 2014 р. на загальних зборах академії, що відбулися 27 лютого 2015 р.

ПИТАННЯ ТЕОРІЇ ПРАВ ЛЮДИНИ

Рабінович І., Гарасимів О. Значення рішень Європейського суду з прав людини у справах проти України для удосконалення її законодавства

ЗАГАЛЬНІ ПИТАННЯ ПРАВОВОЇ НАУКИ

Опіщенко Н. Співвідношення внутрішньодержавного і міжнародного права: наукові реалії сьогодення

Скрипнюк О. Місцевий референдум як форма забезпечення реального народовладдя

Нижник Н., Муза О. Секторальний правовий моніторинг у теорії законотворчості: постановка питання

Кириченко В. Суверенне право на війну – історичний дискурс

Гетьман І. можливості інструментальної герменевтики у вирішенні актуальних задач юридичної науки (на прикладі історичних аналогій)

Онищук І. Дослідження правового моніторингу: понятійно-катерогірський апарат

ПИТАННЯ ЦИВІЛЬНОГО ТА АДМІНІСТРАТИВНОГО ПРАВА

Таш'ян Р. Транспортні організаційні договори

Піцикевич В. Ліцензування у сфері паливо-енергетичного комплексу України

ПИТАННЯ КРИМІНАЛЬНО-ПРАВОВИХ НАУК

Вапнярчук В. Стандарт кримінального процесуального доказування

Дроздов О. Наукові підходи до формування окремих підстав для перегляду судових рішень Верховним Судом України у кримінальному провадженні

Трофименко В. Кримінальна процесуальна форма в контексті сучасної кримінальної процесуальної політики

Узунова О., Артьомов Є. Аналіз статті 368 Кримінального кодексу України на відповідність вимогам юридичної техніки, гуманності і верховенства права

НА ПОЧАТКУ ТВОРЧОГО ШЛЯХУ

Івахненко О. Об’єктивна сторона хуліганських діянь

Калініченко Ю. Об’єктивна сторона завідомо неправдивого повідомлення про вчинення злочину: кримінально-правова характеристика

Лакіза О. Умови праці як системне трудо-правове явище

НАУКОВЕ ЖИТТЯ

Інформація за результатами загальних зборів Національної академії правових наук України
Звіт Національної академії правових наук України про використання коштів Державного бюджету за 2014 рік
Конкурс на присудження Премії імені Ярослава Мудрого
РЕЦЕНЗІЇ
Дослідження об’єктивності права: новий підхід і теоретичні конструкції (*O. Петришин*)
Вдала спроба науково поєднати світське та релігійне (*В. Плавич*)

НАШІ ЮВІЛЯРИ
Андрійко О.Ф.
Селіванов А.О.

Пам’яті В’ячеслава Дмитровича Волкова
Пам’яті Павла Івановича Жигалкіна
Пам’яті Анатолія Семеновича Васильєва
Report of the President of National Academy of Legal Sciences Ukraine V. Tatsiy on the main results of the Academy in 2014 at a general meeting of the Academy, that have occurred February 27, 2015

**QUESTIONS OF THE THEORY OF HUMAN RIGHTS**

*Rabinovych P., Harasymiv O.* The Value of European Court's on Human Rights Case Law against Ukraine for Development of its Legislation

**GENERAL ISSUES OF THE LEGAL SCIENCE**

*Onishenko N.* Correlation of the national and international law: the scientific realities of our time  
*Skrypnyuk O.* The local referendum as a form of support of the real democracy  
*Nyzhnýk N., Muža O.* The segment legal monitoring in the theory of law-making: statement of a question  
*Kirichenko V.* The Sovereign Right to War - Historical Discourse  
*Getman I.* Opportunities instrumental hermeneutic in solving urgent problems of jurisprudence (for example, historical analogies)  
*Omyshchuk I.* The legal monitoring research: conceptual-categorial apparatus

**QUESTION OF CIVIL AND ADMINISTRATIVE LAW**

*Tashian R.* Transport organizational contracts  
*Pitsykeyvych V.* Licensing in the Fuel and Energy Complex in Ukraine

**QUESTION OF THE CRIMINAL PROCESS**

*Vapnyarchuk V.* Criminal Procedure Standard of proof  
*Drozdov O.* Scientific approaches to formation of separate grounds for judicial review of decisions by the Supreme Court of Ukraine in criminal proceedings  
*Trofymenko V.* Criminal procedural form in the context of the modern criminal procedure policy  
*Uzunova O., Artyomov E.* The analysis of Article 368 of the Criminal Code of Ukraine in terms of correspondence to the demands of legal technique, humanity and supremacy of law

**IN EARLY CAREER**

*Ivachnenko O.* The Objective Side of Hooligan Acts  
*Kalinitchenko Yu.* The Objective Side of Deliberately False Reporting Crime: Criminal and Legal Characteristics  
*Lakiza O.* Working conditions as a system of labor-legal phenomenon

**SCIENTIFIC LIFE**

Information on the results of the general meeting National Academy Legal Sciences of Ukraine  
The report of the National Academy Legal Sciences of Ukraine about the state budget funds use on 2014  
Competition for the Award of Yaroslav the Wise
REVIEWS
The research of objectivity law: a new approach and theoretical constructions (O. Petrishin)
A successful attempt to combine the scientific secular and religious (V. Plavych)

PERSONS CELEBRATING THEIR ANNIVERSARIES
Andriyko O.F.
Selivanov A.A.

In memory of Vyacheslav Dmitrievich Volkov
In memory of Pavel Ivanovich Zhyhalkin
In memory of Anatoly Semenovich Vasilyev
RABINOVYCH P., HARASYMIV O.  
THE VALUE OF EUROPEAN COURT'S ON HUMAN RIGHTS CASE LAW AGAINST UKRAINE FOR DEVELOPMENT OF ITS LEGISLATION

In this article it is analyzed the possibilities to the decisionse of the European Court on Human Rights against Ukraine, in which it points out that certain disadvantages national legislation have been the reason for violations of Conventional rights, have influence on national legal system. The classification of such decisions on the following four criteria: content of the Conventional rights that have to be provided with effective legal norms; these types of flaws; verbal form of ECHR conclusions' expression about the shortcomings of legal safeguards treaty rights; sectorial distribution of identified deficiencies ECHR national law within the law system of Ukraine, has been provided. It is concluded that such ECHR rulings can be considered fully met if Ukraine not only paid fair compensation to the applicant, but also eliminated the mentioned legal defects.

The abovementioned results we committed by legal and statistical analysis of ECHR judgments, which were noted legal causes of Conventional rights' and freedoms in Ukraine violations can serve as a meaningful guidelines to improve the efficiency of legal means to ensure and protect the rights and freedoms of human and citizen in Ukraine. In particular, special attention should probably be paid to the elimination of gaps in the legislative inurement of human that are directly pointed by ECHR in its decisions.

For more complete and concrete results of the research and its practical significance improvement, advisable to identify the proportion of those with these deficiencies ECHR Ukrainian legislation, which, after the entry into force of the relevant decisions of the ECHR were somehow resolved through the mediation of legislative activity.

And the last one statement. In clarifying the status of the ECHR judgments, which are his comments on the shortcomings of national legislation as causes of violations of Convention rights, should certainly examine whether the state eliminated the following disadvantages. As long as this is not done, the relevant
decision of the ECHR to be completely satisfied unlikely to be justified. So important proposals subject expertise with the Convention and the ECHR practice not only certain projects of legal acts, and even draft laws of Ukraine.

**Key words:** European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights, legislative guarantees of conventional rights, legal advocacy defects.

ONISHENKO N.

**CORRELATION OF THE NATIONAL AND INTERNATIONAL LAW:**

**THE SCIENTIFIC REALITIES OF OUR TIME**

Among the many urgent problems of our time - the ratio of domestic and international law occupies a central place. This is easy to explain, given the recent political developments and legal realities. In particular, the process of association with the EU demands today from the scientific community informed and professional review, design, close to the practice developments. Of course, we need to create the preconditions for the preparation of the legislative field with respect to Ukraine's joining the EU.

Harmonization of national legislation is carried out in two main areas - domestic and international harmonization. In the first case, harmonization is provided in three ways: a) synthesis of the legal regulations in individual countries, which leads to the creation of national legal systems; b) the harmonization of legislation of individual countries by adopting regulations based on laws of other countries; c) the harmonization of certain countries of the current legislation by adopting international agreements. At the convergence of international harmonization of national legislation is carried out within the countries that belong to the same legal family or to a common supranational union (EU, etc.).

Scientists single out the following eight ways to of harmonization: 1) a multilateral convention without the uniform law; 2) a multilateral convention which includes a uniform law; 3) a set of bilateral agreements; 4) EU legislation;
5) model law; 6) the codification of rules and customs (performed and published by international non-governmental organization); 7) standard contracts or general contract terms; 8) restatements, prepared by scientists or other experts.

International and national law - are two of the same social reality, both have a number of similar characteristics, traits and act as the internal unity of a higher system - law as a general social phenomenon.

However, this does not mean that these legal systems (existing in concrete historical reality) are identical. Of course, they have common characteristics, but between them there are differences, which are determined by economic, social and political structures of a country, as well as the level of culture, tradition, national, demographic factors, etc.

It is necessary to establish a mechanism that would for ensuring all governments (the creation of new and expansion of existing authorities of the international organizations). Development of humanity should be the development of global civilization, which combines the heritage and aspirations of all countries and peoples.

By the legal nature harmonization of domestic (national) law with international law is an ordering of the national legal systems, on the basis of the nature of law in general and universally recognized human values. In particular, the coordination of the domestic legal system to the international legal system provides for the harmonization of not only the law of the national legal system, but also in the areas of harmonization of legal and justice.

Harmonization of national law with international law is not only the «right», but also the duty of the state. Legal obligation of state power to harmonize its national legislation with international law enshrined in numerous, both bilateral and multilateral international instruments.

In each state should be created quite clear mechanism for harmonizing national law with international legal system. The fact that the primacy of international law can`t be interpreted quite straightforward in the sense that all domestic regulations are in the «conquest» in international law. In this regard it should be noted that the
Constitution of the state which embodies its sovereignty, can`t automatically be a «subordinate» to international law, international treaties concluded by the state with the other members of the international community. It is clear that these problems require careful study of the scientific center corresponding to a tolerant discussion in order to save human civilization and the ideals of world order.

**Key words:** law, national law, international law, the harmonization of legislations, legal systems.

SKRYPNYUK O.

**THE LOCAL REFERENDUM AS A FORM OF SUPPORT OF THE REAL DEMOCRACY**

The most important feature of modern mature civil society and democracy is to ensure the principle of democracy and the existence of effective mechanisms for immediate implementation. Fundamentals of referendums in most countries recognized the integral form of implementation of full power of the people. The Constitution of Ukraine provides the opportunity to implement the power by the people on the national level and through its local communities at local government level. Prospects for further development and improvement of referendum democracy in Ukraine is closely related to the improvement of the legal and organizational-and-legal mechanisms for its implementation. In this context, special attention should be paid to the institute a local referendum, the definition of the subject, an exhaustive range of subjects to purpose, to proclaim referendum, mechanism for its implementation and so on. A local referendum is an effective means of control of local communities over local authorities. The article is devoted to the theoretical problems of implementation of local referendums in European countries, the specifics of their implementation in practice and forms of their implementation, the necessity and directions of further development of law in this area in Ukraine. The main criteria for determining the level of democracy legislation in this area should be guarantee adherence to the principles of
democracy and openness in the preparation and conduct of local referendum. In particular, the legislation should regulate the procedure, forms and ways to implement the campaign, the principles of official observers, media etc., define the procedure for appealing against unlawful actions, inaction and decisions that may arise during the preparation and conduct of local referendum. The article is devoted to the different other issues related to the coverage of the subject of a local referendum.

**Key words:** local referendum, people's initiative, sovereignty, referendum democracy, mechanisms of implementation, the implementation of the principles of popular sovereignty.

NYZHNYK N., MUZA O.

**THE SEGMENT LEGAL MONITORING IN THE THEORY OF LAW-MAKING: STATEMENT OF A QUESTION**

Providing of effective legislative activity of Verkhovna Rada of Ukraine is one of important tasks of public legal policy. On this way, forming of perspective plan of law-making activity of parliament which except for the general questions of volume of law-making work must foresee the aggregate of measures from the carrying out of monitoring of bills and legislative acts from the actual spheres of social development is considered expedient.

The realization of the legal monitoring depends on the correct selection of types of such monitoring, as an analysis of quality of legislative acts can be conducted with different aims and group of the proper subjects. Thus it should be noted that within the framework of consideration of pressing questions of perspective legislation, attention is accented on realization of monitoring legal acts of Verkhovna Rada of Ukraine.

If to take into account the selection of the particular branch legal monitoring and monitoring of legislation after the spheres of the legislative adjusting of social relations, by a next step at the level of theoretical ground of realization such
scientifically expert there must be introduction of the segment legal monitoring activity.

A word «segment» means: part of circle, limited by arc and two radiuses; area, limited radial lines; part of certain area; area, district. That, going out from such interpretation of word «segment», it follows to come to the idea that the question is about certain part in unique whole.

Therefore the segment legal monitoring is:

1) as an independent type of the legal monitoring, under which it follows to understand realization of professional scientifically expert activity, related to the estimation and analysis of effective of legal norms, which regulate the separate group of social relations, grouped on a general sign. It will enable to find out the state of the legislative providing of certain sphere of social relations and forecast it subsequent development with bringing in of specialists exactly from that or other sphere of legal knowledge;

2) as a component part of monitoring of legislative acts, by which it is possible to find out blanks and collisions in the legal adjusting of separate types of social relations next to realization of other types of monitoring of legislative acts. It will enable, taking into account the specific of segment approach, to carry out the estimation of legal norms and generalize the state of the legislative providing of certain type of public relations;

3) as a subsidiary constituent of the particular of type of the legal monitoring, this will enable to conduct research of efficiency of application of legal norms in the separate spheres of social relations related to general thematic direction of basic type of the legal monitoring.

To our opinion, the segment approach in realization of monitoring of legislative acts will be instrumental in the improvement of law-making process in the state, because it carrying out must provide for:

1) a systematization of collisions and blanks of the legal adjusting of particular sphere of social relations;

2) a forming of plan of law-making works of parliament for the segment sign;
3) an optimization of the system of parliamentary committees and other structural subdivisions of Legislative establishment of Verkhovna Rada of Ukraine;

4) an update of requirements is to the participants of law-making activity.

**Key words:** legal monitoring, segment, segment legal monitoring, legislative act, examination.

KIRICHENKO V.

**THE SOVEREIGN RIGHT TO WAR - HISTORICAL DISCOURSE**

The article considers the problem of historical development of the right to war and its correlation with the category of «sovereignty».

For the first time the right to war has found signs of legal process in the Roman state. We are obliged to Roman law for the term the right to war (*jus belli*) and for its counterpart right to peace (*jus pacis*). Even today, the war is meant to be a form to protect the rights against sovereign entities, over which legal power does not dominate. But practice shows that the war, declaring the protection of rights, first of all, destroys the old relationship and only then, at the end of the war, depending on the current balance of political forces, creates a new legal order.

The desire of mankind to keep the peace did not interfere with the perception of the war as a natural phenomenon, all philosophers, which offered recipes of «eternal peace», insisted on that. Hypothetically, recognizing the possible existence without war, the scientists have formulated criteria, which were difficult to achieve. As panacea it seemed to be the creation of a union of states or peoples states on the condition of keeping individual subject and refusing from sovereignty, and the basis for this must have been an international law.

The concept of state sovereignty is based on the independence of the state in the external and the internal affairs of the rule, and the concept of sovereignty is central to the definition of the state. It describes the legal nature of the sovereignty of the state and is the criterion by which it is possible to distinguish the state from
other public-law unions. Recent history shows an attempt to create a union state of mankind or peoples state that would stand above the sovereign states. Namely the experience of European integration can be seen as an experiment over sovereignty. Moreover, the current conditions of globalization have created a reason to doubt the necessity of the existence of such categories as state sovereignty. Nevertheless, the principle of the sovereign equality of States is one of ten fundamental pillars of international relations, and namely international institutions, in particular the UNO, can be regarded as guilty of the fact, that sovereignty acts as a cover for all sorts of abuses by the state, including wars.

At the present stage of civilization development, right to war is due to both state sovereignty and right to peace. And although this right can be considered a natural and traditional, in comparison with the right to peace, the general trend of the historical mankind development shows the intention to restrict it with all possible legal means.

**Key words:** right to war; right to peace; the war; the peace; sovereignty; globalization.

GETMAN I.

OPPORTUNITIES INSTRUMENTAL HERMENEUTIC IN SOLVING URGENT PROBLEMS OF JURISPRUDENCE (FOR EXAMPLE, HISTORICAL ANALOGIES)

**Problem setting.** The last twenty years of Ukrainian society associated with the reform of public relations and fixation in the legal standard of human rights and citizen acts as a universal moral values and achievements of modern civilized nations. For Ukraine announces the introduction of the standard material changes in the system of construction of public authority; means a steady shift in the relationship «state – law»; instrumental «upgrading» of socio-legal doctrine; establish a new regulatory paradigm. Before legal theory, this paradigm raises the following objectives: a) to define the essence of the law; b) devise adequate
methodological tools to study the phenomenon of law. Today the transition legal knowledge to a new level determines pluralism methodological approaches to understanding the law. Increasingly, research resources for modern researchers are of law in the universal theory of understanding – philosophical hermeneutics. In such circumstances, the focus is on the phenomenon of thinking, a process which is accompanied by methodological instruments of the interpretation i.e. arsenal of tools belonging to the hermeneutic method.

**Recent research and publications analysis.** Hermeneutic problematic has received the popularization by the scientific research: V. Y. Taziy, P. M. Rabinovich, M. I. Kozubra, S. I. Maximov, A.V. Petrishin, I. P. Malinova, H. N. Atarschykova, S. S. Gusev, G. L.Tulchinsky, M. K. Mamardashvili. V.G. Grafskiy, A. V. Polaykov, I. L. Chestnov, I. A. Isayev, G. I. Ruzavin, A. F. Zakomlistov, E. Bettiyi, Toyne A. Van Deick. V.Y. Taziy attracts the attention of the scientific community to study the relevance and promising of legal hermeneutics in view of the process of rethinking legal validity, construction of a new legal world view in the postmodern era. P. M. Rabinovich defends position, according to which reforms in Ukraine's foreign policy positions caused the actualization of legal hermeneutics, which provided almost decisive importance in the justification, the evaluation and study of natural phenomena. SS Gusev and GL Tulchinsky call to avoid one-sided interpretation of the universal theory of understanding - hermeneutics exclusively as understanding, that understanding of language structures (speech, text). Scientists proposes to consider understanding as a form of moral and practical understanding of reality in general. A. F. Zakomlistov shared the view V.S. Nersesyants and S. S. Alekseev of determining the status of philosophy of law as science included in the context of legal knowledge. Moreover, the scientist goes on in their arguments and draws the necessary methodological tools in one of the philosophical concepts – hermeneutic.

**Paper objective.** The aim is an illustration of heuristic value hermeneutical heritage through the use of historical and chronological instruments. Research
activities in this area will provide an opportunity to prove groundlessness fact correlation hermeneutic ideas only with time and work of German Romanticism F. Shleyyermahera and F. K. Saviny, followed by a transfer to date and the works of H.-G. Gadamer, A. Kaufman, E. Betty. Achieving the goal will be in the proof of the timing of the historical origins of the first knowledge of the methodology of hermeneutic of Antiquity.

**Paper main body.** The origin immanent (instrumental) hermeneutics owes the ancient time, as the primary objective of the so-called «philological hermeneutics» era of German Romanticism was to achieve an accurate understanding of ancient texts, free christian interpretations. Verify the existence of applied hermeneutics in antiquity may appeal to the scientific legacy of Aristotle, especially his teachings «About the interpretation». The latter establishes a system of historical and chronological genesis of ideas that are applied at the heart of hermeneutic of German Romanticism and modernity. For the convenience of all research systematize hermeneutical application knowledge in three schematic ideological and canonical blocs: 1) rule philosophy of Friedrich Schleiermacher «unity of the whole manifested through its individual particles, and the content of individual particles is manifested through the unity of the whole» - the concept of «composite defined», as the ancient equivalent of the philosophical teachings of Aristotle. 2. «Hermeneutical canons» E. Betty – syntactically-etymological interpretation initiated by Aristotle (as in the original language interpretation through rules «proper or improper definition image building» and «defining the essence of things being»). 3. «The theory of interpretation of treaties» F. K. Saviny – «tops» of Aristotle aimed to solve the question of the interpretation of what is a desired item and better. So, at first, rule for a correct understanding on the basis of its particles and vice versa, in the philosophy of Friedrich Schleiermacher, finds its roots in the concept of «composite defined» Aristotle. Secondly, there are parallels between hermeneutic canons established E. Betty, and syntactically-etymological interpretation meaning of being stuff by Aristotle. It is worth noting the existence of the third ideological block knowledge of the immanent hermeneutic, which
represented work F. K. Saviny «Theory interpretation of the agreements» and their corresponding tops Aristotle can help you figure out which items are more desirable and better.

**Conclusions of the research.** At first, the conducted research of hermeneutical methodology proves acquiring increasing importance of new methodological approaches to understanding the law. Secondly, it can be regarded as established fact corresponding relations between hermeneutic knowledge accumulated in the present day and the day of German Romanticism, with expertise in this area, which arose in antiquity days. Thirdly, the attempt to start the systematization of the practical potential of hermeneutical organized to invite to creative collaboration of scientists to develop specific recommendations based on the available instruments that will help correct understanding and interpretation texts of normative acts for adaptation of Ukraine to EU law.

**Key words:** hermeneutic methodology, instrumental hermeneutics, hermeneutical canons, rules (tops) for interpretation, understanding, knowledge, opinions, thinking, antiquity, the German romanticism, adaptation the legislation of Ukraine.

ONYSHCHUK I.

**THE LEGAL MONITORING RESEARCH: CONCEPTUAL-CATEGORIAL APPARATUS**

Monitoring is a fashionable word or a new methodological model? The question is essential, because we are talking about the concept, which extends the scope of its usage and gains polysemy, penetrating into various spheres of knowledge. In the field of law monitoring is a special concept that reflects the specifics of the studies of law and has pronounced methodological meaning, or meanings, because they are synthesized complex measurements and operations.

However, the development of the conceptual and methodological foundations of the legal monitoring is more of a task than current practice, and this is especially
true for the development of its philosophical content. Does it exist at all? What are the grounds for a positive answer to this question?

This issue is reflected in research A. Akmalova, Y. Arzamasov, A. Dydykina, I. Zhuzhgov, T. Moskalkova, J. Nakonechnyj, A. Pashkov, Y. Tikhomirov, I. Farman, V. Chernikov, I. Shutak and others.

In scientific studies there is a lack of unified approaches to the understanding of the epistemological foundations of the legal monitoring.

Therefore, the aim of this research paper is to identify the main characteristics of the monitoring epistemological context: theoretical and cognitive and socio-legal content, scope, significance and use, as well as a new focus its methodological orientation; to determine the place and purpose of the legal monitoring in the structure of different forms of knowledge.

The term of «monitoring» is quite wide spread in academic literature. In practice this concept and its derivatives are used regardless of the sector. Therefore, it is necessary to track and analyze all the key points of the historical evolution of the concept of monitoring: from its initial interpretation to the fact that developed during the Soviet period, that is the interpretation, which at this stage is recognized as inadequate and subject to reconsideration.

So, according to our definition, the legal monitoring is a pragmatic method of obtaining knowledge and self, a special type of activity of state authorities, civil society institutions with the aim of analyzing, assessing and forecasting the quality of regulations and enforcement.

The action of the legal monitoring is not aimed at the discovery of the objective reality, and the organization of research in the field of law and track its dynamics, resulting knowledge. Interpretation of monitoring as a method of cognition gives new material for the characteristics of the driving forces of cognitive activity and modern types of knowledge. Theoretical terms of reference to the monitoring helps to give a more adequate way the modern educational process.
The scope of the monitoring is both science and social experience. Particularly complex cognitive at its core function monitors the system, integrated, global studies. In social terms, legal monitoring can be considered as the methodology of implementation and monitoring of the dynamics of creation of normative-legal acts and their implementation.

In General, legal monitoring can be described as promising method educational practice and experimental science as a tool for the solution of specific tasks of life and management of the situation, especially in today's modernization.

*Key words:* monitoring, legal monitoring, method, technique of legal monitoring, analysis, evaluation, prediction.

TASHIAN R.

**TRANSPORT ORGANIZATIONAL CONTRACTS**

The article is devoted to researching of transport organization contracts. The article’s purpose is studying the transport organizational contracts, analysis of their evidence and formulation a definition of this law category. The author investigated the views of civil law scientists of this question. The analysis of organizational relationships was made, defined their place and values in the system of relationships. Also the author has provided the researching of organizational contracts, set their important features, which distinguish them from other civil contracts. The specific feature of organizational relationships is focus on an ordering other civil legal relationships, which have a material nature. Participants of organizational relationships have two purposes: an intermediate (a creation the grounds for the appearance of material relationships) and a final (which can be an achieved with property relations). Organizational contracts have specific functional and purposes focus— they define a procedure for entering into the property contracts, because they are a prerequisite for their making, or regulate the process of their executions. Organizational contracts are important in regulation of transport relationships, which are often long term by their nature. On the grounds of
transport organization contracts other material contracts could be signed, and other legally significant action could be made. In the system of organizational transport contracts the most common are a navigation agreement, a contract of centralized transportation of goods, special contract trucking companies, a special contract concluded by carriers of civil aviation and clientele, a contract abiur submission of the vehicle for loading and presentation of cargo for shipment: booking- and note fixture-note, the agreement to submit the vehicle for loading and presentation of cargo for shipment: booking- and note fixture-note, contract of carriage of goods on special conditions. In the article the author proposed the definition of organizational transport contracts, set their features, held theirs distinguish from previous contracts, framework agreements, general agreements, protocols of intentions and agreements with open terms. The author suggests her own opinion concerning the legal nature of transport organizational contract. The author also researched the internal differentiation transport organizational contracts. The article deals with some types of transport organizational contract.

**Key words:** organizational legal relationships, an organizational contract, a transport organizational contract, a previous contract, a framework agreement, a general agreement, an agreement with open terms.

PITSYKEVYCH V.

**LICENSING IN THE FUEL AND ENERGY COMPLEX IN UKRAINE**

There are both, positive and negative views regarding the need for licensing of certain economic activities. The licensing is a tool of necessity in the administrative funds system, which should be used reasonably. Moreover, the need to improve the licensing is indicated in the program of economic reforms in 2010-2014 years: «Prosperous Society, Competitive Economy, Effective State». However, full implementation is not achieved.

Thus, disclosure of the theoretical and practical basis for licensing of
economic activities in the fuel and energy complex in Ukraine will not only improve the licensing system, but also energy security of Ukraine.

There is the following scientists in national and foreign literature that have attend to licensing: V. Averyanov, O. Bandurka, D. Bahrac, E. Bekirova, V. Busel, S. Vitvitskyy, E. Gubin, Z. Ionova, S. Kivalov, P. Palchuk, I. Pastuh, N. Saniahmetova, Y. Shemshuchenko, L. Shestak and others. However, licensing in the fuel and energy complex in Ukraine was not examined in complex. The purpose of this article is to characterize in general the licensing in the fuel and energy complex in Ukraine.

This article emphasis on the fact that in the Commercial Code of Ukraine, as well as other experts in the disclosure of meaning of «licensing» is used the term «means». Therefore, it is explored the essence concept of «means» and proved that the most reasonable and appropriate is understanding of licensing in the fuel and energy complex in Ukraine as a means of administrative and legal regulation of licensed activities in the fuel and energy complex in Ukraine.

Besides, there was conducted comparative description of licensed relations for certain types of licensed activities in the fuel and energy complex in Ukraine. Based on these data it was found that licensing in the fuel and energy complex in Ukraine – is a mean of administrative and legal regulation of licensed activities in the fuel and energy complex in Ukraine, the content of which is the activity of competent authorities to issue, restructure, suspending the force and revoke licenses, issuance of duplicate licenses, recognition invalid license, issuing orders to eliminate violations of license conditions and orders to eliminate violations of legislation on licensing.

There is no unified state policy in the area of licensing and licensed relations in the fuel and energy complex in Ukraine. Differentiation is, in particular: a) in the amount of license fee; b) in the terms of issue of the license; c) the need to include to the license application the document confirming fee payment for issue of the license.
**Key words:** licensing, mean, licensed activity, administrative and legal regulation, fuel and energy complexion Ukraine.

**VAPNYARCHUK V.**
**CRIMINAL PROCEDURE STANDARD OF PROOF**

This article gives a general description of the nature of the standard of proof as one of the main elements (criteria) evaluation of evidence (and evidence as a whole). Rules of evidence are analyzed in the Anglo-Saxon and continental legal systems and domestic criminal procedural legislation for characteristics evaluation of evidence in criminal proceedings and different in its various stages. The conclusions about the existence of a Consuetudinary objective standards of proof ("beyond reasonable doubt" and "balance of probabilities") and subjective standard of proof in civil law countries (for "moral certainty").

In criminal procedure law of Ukraine on the standards of proof, assumed that in our criminal proceedings, as in most countries in continental Europe received the so-called subjective standard of proof "for moral certainty." However, this does not mean the absence of any objective rules of evidence. These, according to the author include rules concerning the origin and admissibility of evidence (Articles 85-90 CCP), the rules governing the burden of proof; objectivity takes place in the exempt entity proving certain facts (known, prejudicial, those prezymuyutsya and recognized).

In addition, on the basis of analysis of the current CCP quite legitimate, and indeed, even reasonable, is the allocation of certain objective standards of proof, such as those that take place in the countries of Anglo-Saxon legal system. This allocation is essentially lehalizuvatyem their existence, because they actually have long been regulated by law and used in practice.

It is proposed to distinguish between these objective standards of proof in the domestic criminal procedural proving: 1) "at first sight" (or "by their appearance phenomena" or "probable assumption"); 2) "a powerful belief" or "reasonable
assumption"; 3) "beyond reasonable doubt"; 4) "reasonable doubt" (or "reasonable opportunity"), which in essence is the opposite of the standard "beyond reasonable doubt" and used (must be used) the defense.

Key words: standard of proof, conscience and assessment of evidence (proof), reasonable doubt, the balance of probabilities, reasonable suspicion, probable assumption.

DROZDOV O.

SCIENTIFIC APPROACHES TO FORMATION OF SEPARATE GROUNDS FOR JUDICIAL REVIEW OF DECISIONS BY THE SUPREME COURT OF UKRAINE IN CRIMINAL PROCEEDINGS

The article is devoted to general theoretical analyzes of specific grounds for judicial review of decisions by the Supreme Court of Ukraine in the criminal proceedings. Such an analysis is made on the basis of European Court of Human Rights and the Supreme Court of Ukraine.

A special place in the article by highlighting the relevant provisions of the Law of Ukraine "On the right to a fair trial." Specifically, detailed analysis of the content of the following grounds for judicial review of decisions by the Supreme Court of Ukraine as an unequal application of the court of cassation of the same law, the Law of Ukraine on criminal liability in such relationship that led to the adoption of different content of judgments (except for unequal sanctions of criminal law, exemption from prosecution or punishment); unequal application of the court of cassation of the same rule of law laid down by the Criminal Procedure Code, which led to the adoption of different content of judgments; discrepancy in the judgment of the court of cassation opinion on the application of the law laid down in the decision of the Supreme Court of Ukraine and the establishment of Ukraine Parliament Commissioner for Human Rights violations of human rights and fundamental freedoms during pre and / or proceedings that may affect the application of the law of Ukraine criminal penalties.
In the article the author studied the ratio of legal categories as "rule of law" and "rule of legal", "like relationship" and "such socially dangerous acts", "uneven sanctions of criminal law" and "punishment"

**Key words:** conclusions of the Supreme Court of Ukraine, unequal application of the law, such legal ,similar relationship , such socially dangerous acts, Resolution of the Supreme Court of Ukraine, European Court of Human Rights, different in the meaning judgments, sanctions of criminal law, court of cassation, Parliamentary Commissioner for Human Rights of Ukraine.

TROFYMENKO V.

**CRIMINAL PROCEDURAL FORM IN THE CONTEXT OF THE MODERN CRIMINAL PROCEDURE POLICY**

The existence of special correlations between the criminal form of action and the criminal procedural politics of Ukraine determines the necessity of analysis of the specifics of the criminal procedural politics, its purpose, tasks, and main principles of its realization. The humanistic component of the criminal procedural politics, which contains human rights, plays a top role in solution of the question concerning the unification as well as the differentiation of the criminal form of action. The directions of the criminal procedural politics, which influence the choice of the law model of the criminal form of action of the modern criminal proceedings in Ukraine, are defined in the article. The regulation of the legal facts as to the main directions of the criminal procedural politics is realized in the Criminal Procedural Code (CPC) of Ukraine, for example, by means of foresighting the peculiarities of a prejudicial inquiry, a court hearing as well as an appeal review of judicial decisions in frames of a criminal proceeding as to criminal misdemeanors, which define the differentiation of a criminal form of action in the direction of its simplification.

It’s noticed, that the direct influence over the determination of a law model of the criminal form of action of the modern criminal proceeding in Ukraine,
realize such directions of the criminal procedural politics as the expansion of the sphere of applying of the recovering procedures and a mediation; the creation of new procedures which assist to achieve the purpose of the punishment; the humanization; the providing of task solutions in frames of a criminal proceeding with keeping to the standard of a reasonable period of time by applying the principle of a processual economy; the restriction of the constitutional rights of a person during the realization of a criminal proceeding with keeping to the principle of the ratability of interference, the purpose of using enforcement measures and so on.

It’s noticed that the strengthening of the humanistic component in the criminal procedure law creates a content of a certain direction of the modern criminal procedure politics. More specifically the operation of the adversarial principle during a prejudicial inquiry is essentially expanded. As a result some new proceedings appeared at the investigating judge. A part of them contemplates an adversary procedure of dealing with subjects of the legal nature. The operation of the adversarial principle determined the new order of accomplishing of the prejudicial process by means of giving access to the materials to the other part. The transformation of the form of action that realizes this principle being in a state of the preliminary procedure determined its conceptionally new model which is optimized for the adversary criminal proceeding. The humanistic orientation has an essential expansion of dispositivity in the criminal proceedings, particularly, these are the changing of the procedural order of acknowledging a person as injured or aggrieved, the implementation of agreements about admission of guilt and about compromise and so on.

The author remarks that the reform of the criminal proceedings legislation is not over yet with the adoption of the new Code, because the time of its implementation showed ad oculos those gaps and contradictions which should be disposed of during the further law making and the realization of the criminal proceedings politics, that is optimized for humanization of criminal procedure.
It’s claimed in the article that there exist an indissociability of the criminal proceedings politics and the criminal form of action, which lies in the fact of a direct influence over the determination of a certain legal model of the form of action of the top-priority goals in the criminal proceedings politics in the context of a certain historical stage of the state development.

**Key words:** criminal procedural form, criminal procedural policy, combating crime, criminal procedure law, criminal proceedings.

UZUNOVA O., ARTYOMOV E.

**THE ANALYSIS OF ARTICLE 368 OF THE CRIMINAL CODE OF UKRAINE IN TERMS OF CORRESPONDENCE TO THE DEMANDS OF LEGAL TECHNIQUE, HUMANITY AND SUPREMACY OF LAW**

The key task faced by Ukrainian society on the way to establishing a strong, independent and rich country is overcoming the corruption in public authorities, ensuring the transparence and legality of their activity. The aim of the paper is to formulate a disposition of Article 368 of the CC of Ukraine; a disposition which would be relevant in terms of legal technique, principles of humanity and supremacy of law.

The first part of the paper is devoted to drawbacks of rule-proclaiming technique in the process of criminalization of ‘bribery’. On the basis of everything mentioned above we should make the following conclusions from the first part paper: 1) in the corpus delicti specified by Article 368 of the CC of Ukraine the notion of ‘illegal profit’ expresses the object of crime which because of this is an obligatory attribute; 2) the notion ‘illegal profit’ should be understood as welfare which cannot be accessed by the subject of a crime because of restrictions or prohibitions fixed in laws; 3) acquisition of ‘legal profit’, i.e. welfare not forbidden by law does not make up corpus delicti specified by Article 368 of the CC of Ukraine; 4) to achieve the aim of the norm mentioned above it is necessary to
extrapolate the attributes of illegality which are given in the disposition of Article 368 of the CC of Ukraine from the object of crime to the behavior of an offender.

The second part of the present paper is devoted to inspecting the legislator’s observance of principles of humanity and supremacy of law while criminalizing the corrupt practices in Article 368 of the CC of Ukraine. On the basis of the analysis carried out in the second part of the study the following conclusions should be driven: 1) the active version of disposition of Article 368 of the CC of Ukraine doesn’t take into account either the requirements of criminal law theory or the requirements of justice, that is why it must be changed; 2) social danger of ‘acquiring illegal profit’ for doing legal deeds is considerably lower than social danger of ‘acquiring illegal profit’ for committing illegal deeds, this should be taken into account both by the legislator while criminalizing the mentioned deeds and by judges while defining the extent of responsibility; 3) the deeds which are compared should be fixed in different articles of the law on criminal responsibility because of difference in the objects of encroachment and also because of different social danger, the punishment for such deeds should also be correspondingly differentiated; till the introduction of corresponding changes into the legislation the courts should take into account the legality of the decision which was made as a circumstance which considerably extenuates the responsibility.

The fulfilled research resulted in the conclusion that the following changes should be made in the CC of Ukraine: 1. Article 368 of the CC of Ukraine should be stated as follows: “1. Illegal profit acquisition (acceptance of an offer or promise) by a public officer as well as a request to give profit for themselves or for a third party for doing or not doing by this public officer in the interests of the person who offers, promises or gives profit or in the interests of a third party an illegal deed using their power or position is punished...”. 2. The CC of Ukraine should be completed by Article 368-1 of the following contents: “1. Illegal profit acquisition (acceptance of an offer or promise) by a public officer for doing or not doing by this public officer in the interests of the person who offers, promises or gives profit or in the interests of a third party an illegal deed using their power or position is punished...”.
gives profit or in the interests of a third party a legal deed using their power or position is punished…”

**Key words:** anticorruption legislation, corruption, corruption offence, European standards, illegal profit, welfare, profit, public officer.

IVACHNENKO O.

**THE OBJECTIVE SIDE OF HOOLIGAN ACTS**

In the article the questions of characteristic of hooligan acts’ the objective side both crimes and *corpora delictorum* are examined. In other words, they are considered as specific acts of volitional human behaviour committed in the real world, and as a combination of features, formulated in the relevant articles of the criminal law in their relationship and interdependence. Our research revealed that in the modern literature hooligan acts’ objective side is not the same, but the diversity of statements can be reduced to two main scientific positions. Supporters of the first position argue that hooligan acts’ the objective side is characterized by actions that grossly violate the public order and are special rudeness or exceptional cynicism. According to supporters of the second position in hooligan acts’ the objective side should include active public actions, specific socially dangerous consequences, causation between actions and criminal consequences, given that the offence is committed by subject in accordance with his views, motives and goals, which are formed on the basis of objective factors. That’s why the goals of the present article are to establish if the positions differ are complement each other and to consider this issue based on an integrated and systematic approach. As a result, both existing in the literature scientific position on hooligan acts’ the objective side don’t contain any conflicting judgments. Their differences are explained by the fact that the researchers have in mind – the crime committed in the reality or an offense stipulated by article of the criminal law. If scientists just mention about the effects that grossly violate the public order and are special rudeness or exceptional cynicism, we mean the element of hooligan acts stipulated by Article 296 of the
Criminal Code of Ukraine (2001), because any signs of hooligan acts’ the objective side of corpus delicti is not marked here in contrast to the disposition of Article 206 of the Criminal Code (1960), which stated on two interrelated features of the objective side of corpus delicti: 1) gross violation of public order and 2) expression of obvious disrespect for society. As for the disposition of Article 296 of the Criminal Code of Ukraine (2001), it is the expression of obvious disrespect for society is a subjective characteristic of corpus delicti in the form of the motive of the crime. If scientists analyze the objective side toward hooligan acts in general and hooliganism in particular, and reveal the relationship of objective and subjective factors, they already mean no offence, but crime committed in the real life, which is always has the interaction of objective and subjective features. This article pays attention to the fact that such feature of hooligan acts as an expression of obvious disrespect for society cannot be attributed only to the objective or subjective sides of the crime, because this element of the hooligan acts is an universal objective-subjective component, which manifests itself in reality both a motive and a specific action that is obvious to others and to the subject of the crime. It is concluded that the content of hooligan acts both crimes and corpora delictorum are not the same volume. That’s why characteristic of the objective side it is necessary to give a comprehensive manner (in other words, with both positions) or clearly indicate that the researcher has in mind. It is also argued that the entire array of hooligan acts is not limited to those actions that fall under the features of Article 296 of the Criminal Code. So it covers also acts, that stipulated in other articles of the Criminal Code and gross violate of public order, express of obvious disrespect for society and (or) committed an hooligan act.

**Key words:** hooligan acts, objective side, offence, corpus delicti.

KALINICHENKO YU.

THE OBJECTIVE SIDE OF DELIBERATELY FALSE REPORTING CRIME: CRIMINAL AND LEGAL CHARACTERISTICS
The article is devoted to researching the objective side of deliberately false reporting crime.

Despite that the features of the objective side of the crime are the most fully reflected in the criminal legislation there are many theoretical and practical difficulties with their analysis. This makes the study of the objective side of deliberately false reporting crime very important, because the qualification of the offense and the delineation of similar crimes depends on the correct setting of these features.

The question of the objective side of deliberately false reporting crime is not sufficiently developed in criminal law theory. Some contribution to the study of these issues has been made by M.I. Bazhanov, I.S. Vlasov, M.I. Tyazhkova, M.Kh. Khabibullin, I.A. Farhiyev, A.I. Chuchayev, S.M. Yudushkin. But after the entry into force in 2001 the Criminal Code of Ukraine separate research in this field wasn’t conducted.

The purpose of this paper is to determine the objective side of the crime under Art. 383 of the Criminal Code of Ukraine and to examine the importance of its features to solve both theoretical issues and some aspects of the practice of application of Art. 383 of the Criminal Code of Ukraine.

The article discusses the required features of the objective side of the crime under Art. 383 of the Criminal Code of Ukraine, defines the essence of a socially dangerous act and the form in which it can be done. It describes the deception as a method of committing a crime.

The paper explains, that the criminal act under Art. 383 of the Criminal Code of Ukraine has the form of action and in some cases mixed form of the act, which is available when the person, who tells lies about certain facts or person, hides certain facts that correspond to objective reality.

It is shown that required feature of the objective side of a crime is a method of a crime – the deception, which is characterized by such categories as «content», «form» and «means». It states that the content of deception is false information about certain circumstances for which one person misleads another, such as: about
the crime event; about the person who committed it; about the event and person both. Such information about a crime may be false in whole or in part. The form of deception may be different: orally, in writing, by telephone, using the mail, computer networks or other technical means, as well as actions that are informative. The means of deception are different objects of the material world, that person uses to introduce another person astray (forged documents, falsified objects, photos, videos, etc.).

It is emphasized that the crime under Art. 383 the Criminal Code of Ukraine is completed after admission false reporting crime to the specified in the disposition of Art. 383 recipients, regardless of whether the criminal proceedings initiated or prosecuted falsely accused person, or come any other consequences.

On this basis it explains the meaning of the features of the objective side of deliberately false reporting crime to solve the theoretical issues and practice of application of Art. 383 of the Criminal Code of Ukraine.

*Key words:* objective side, deliberately false reporting crime, a socially dangerous act, a method of committing a crime, deception.

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LAKIZA O.

**WORKING CONDITIONS AS A SYSTEM OF LABOR-LEGAL PHENOMENON**

In the article, the author provides an attempt to find the meaning, to differentiate and to identify the main essential features of such categories as “safe” and “healthy” working conditions. Revealing the nature of the stated concepts, the author emphasizes that safe and healthy working conditions are narrower in the meaning than the concept “working conditions” and refer to it as a part of the whole. Analysis of their correlation has given the opportunity to provide author’s definitions and to give new subject matter for such important labor law categories as “safe” and “healthy” working conditions. Safe working conditions, according to author’s opinion, is a situation of establishing and realizing a system of
organizational, managerial and technical conditions to prevent workplace injuries and occupational diseases of employees, while they perform their job duties. Healthy working conditions should be considered as conditions corresponding to social and economic, sanitary and health-care standards and rules, which preserve physical, mental and social well-being of the employee during his/her work activity, as well as his/her work capacity.

The author emphasizes that social and legal category reflecting the person's ability to work and being determined by the level of his/her physical and spiritual development, health condition, professional knowledge, skills and experience is the work capacity. If the criminal or administrative law takes into account health condition leading to actual loss of legal personality, and this recognizes a person to be disabled, and the civil law, by the decision of the court, can use it while recognizing a person to be partially incapacitated or incompetent, then the labor law considers health condition in quite another meaning. It is not about health condition as a legal fact, but as one of the features of the labor law subject – employee. In its turn, the disability is a health condition (functioning of the organism) of a person caused by disease, injury, etc., which makes it impossible for him/her to perform a certain amount of work, or occupation, without causing harm to health.

The article provides the definition of temporary disability, which refers to a person’s disability because of disease, injury or other reasons that do not depend on the fact of disability (delivery, quarantine, nursing, etc.), which has a temporary reversible nature due to treatment and rehabilitation measures, continues till the end of vocational rehabilitation or defining the disability group, and in case of other reasons – till complete removing of reasons for temporary suspension from work.

In addition, the author provides the understanding of working conditions as a combination of social and workplace factors, in which the labor activity of the employee at the enterprise, institution, organization or individual is performed, and which affects his/her health condition and work capacity. It has been noted that
social factors include salary, working hours, vacations and other conditions. The author understands workplace factors as technical, sanitary and health-care standards, consumer operations and other conditions. Working conditions are established by the labor law, agreements, collective agreement and by the agreement of the employment contract parties. They are rated according to how the working environment at the workplace, the nature of work, work pattern meet the requirements established by the labor law in the area of labor safety of the employees.

**Key words:** working conditions, safe working conditions, healthy working conditions, safety, production factor, efficiency, disability.