LAW HERALD

LAW HERALD

3'2014

Issued six times per year

Founder: National University
"Odessa Law Academy"

The journal is registered by the Committee of Press and Information of the Odessa Regional State Administration on November 12, 1993. Certificate: series ОД № 189. Re-registered by the Ministry of Press and Information of Ukraine of July 28, 1996. Certificate: series КВ № 2065 and the Ministry of Justice of Ukraine on May 25, 2010. Certificate: series КВ № 166835255 ПР. Re-registered by the State Registration Service of Ukraine on November 14, 2011. Certificate: series КВ № 192419041 РП.

By the decree of the Presidium of the Higher Attestation Commission of Ukraine the journal is included to the List of scientific publications, and is allowed to publish results of scientific researches (Decree of July 9, 1999 – № 105/7, April 14, 2010 – № 105/3). ISSN 1561-4999 (March 18, 1999)

Subscription code: 40318

Laws and regulations specified in the journal are unofficial information.

Reprint of the material published in the journal is allowed only with the reference to the journal.

Recommended by the Academic Council of the National University "Odessa Law Academy" Protocol № 7 of 20.06.2014

Editorial and Publishing Division of the Scientific Research Department of the National University "Odessa Law Academy"
Pionerska Street 2, office 1007, Odessa, Ukraine, 65009
Editorial Office: +38 066 821 82 28
Deputy Editor – Executive Secretary
Tel: +38 067 480 23 53
E-mail: yv@yurvisnyk.in.ua
Web-site: **www.yurvisnyk.in.ua**

Scientific journal
LAW HERALD 3'2014
In Ukrainian, Russian and English

Passed for text capture 02.06.2014.
Passed for printing 27.06.2014.
Format 70x108/16.
Offset paper.
Conventional printed sheets 33,02.
1000 copies.
Order № 22.

Printed by publishing house "Yurydychna Literatura"
(Certificate of subject of publishing
ДК 4284 of 23.03.2012)
Odessa, Pionerska Street 7
Tel. (048) 777-48-79

Odessa • "Yurydychna Literatura" • 2014

CONTENTS

METHODOLOGY OF THEORY AND PRACTICE OF JURISPRUDENCE

A. Ovchinnikova
Concepts of legal culture: notion, structure, content 5

V. Zavalniuk
Legal traditions and understanding legal reality anthropocentric 6

CONSTITUTION OF UKRAINE IN ACTION

S. Matvieiev
Legitimacy and legality as features of the state power 7

N. Barbashova
Regionalization of the unitary state 8

B. Kravchuk
The procedure for appointment and election of judges as an element of their constitutional legal status 9

N. Bocharova
Freedom of creativity as constitutional value of information-oriented society ... 10

REFORMS IN UKRAINE

M. Vasylenko
Crisis of innovation in the Ukraine imperfections and ignore innovative legislation 11

A. Pavliuk, K. Ilikchiieva
Unified register of advocates of Ukraine: issues of further reforming 12

A. Pakhomova
Features of informatization of agricultural science in Ukraine 13

STATE ADMINISTRATION AND LOCAL SELF-GOVERNMENT

K. Bondarenko
On the issue of defining the object of state management 14

E. Bilokur
On the definition of the concept "the functions of the bodies of public administration" 15

I. Sopilko
On the necessity of definition of state information policy 16

A. Korovaiko
Administrative and legal basis of organization and functioning of Cabinet of Ministers of Ukraine in the field of foreign affairs 17

O. Koicheva
Organizational and legal support of financial and control activity of accounting chamber of Ukraine 18

P. Makushev
Functional peculiarities of the management activity of the state executive service agencies ... 19

V. Volik
State policy in the sphere of city transport 20

O. Syniehubov
Prospects for development of the institute of implementation of non-property children's rights in Ukraine 21

S. Synchuk
On discussion about state's "social responsibility" in social security legal relations 22

I. Shyshko
Copyright in the system of human rights 23

PROBLEMS AND JUDGEMENTS

S. Andreichenko
The concept of absolute liability in international law 24

N. Anischuk
Realization of the advocate profession by women in the United States of America: history and present days 25

O. Babenko
About the effectiveness of legal regulation of the legal professional bodies' status *26*

L. Batanova
Definition of the concept "financial control in customs": theoretical and legal aspects *27*

H. Blinova
Information privacy in medical field ... *28*

Y. Maksymenko
Legal regulation of informational relations in Ukraine: status and prospects *29*

M. Hudyma
Problem issues of release tour operator's (travel agent's) liability for breach of a travel services contract *30*

M. Hudyma
Specificity of subjects of contractual obligation for travel services *31*

Y. Demyanchuk
Current problems of publicity in the information security law *32*

B. Derevyanko
On provision of additional non-educational paid services by educational institutions *33*

V. Makoda
Structure and systematization of intellectual property *34*

O. Kostiuchenko, I. Dmytriieva
The principle of competition during pre-trial investigation *35*

V. Dorohykh
Violation of customs regulations and responsibility for them *36*

V. Yerokhina, V. Volynets
Measures of protection in the labor law *37*

Yu. Zhelikhovska
Main objectives and principles of notary ... *38*

O. Zhuravel
Administrative liability of parents or persons substituting them for homeless children *39*

M. Zakharenko, M. Pototskyi
The special court on intellectual property cases in Ukraine: an error or necessity? *40*

D. Krylova, L. Shekhovtsova
Legal entities as victims of crimes and viability of investigation of them in victimology *41*

O. Kryshevych
Methods of swindle at the real estate market *42*

I. Lagutina
The right to protection of employee's personal data *43*

T. Loskutov
Dogmatic and axiological approaches to definition of a subject of legal regulation in criminal proceeding *44*

I. Lukach
Legal aspects of absent voting at general shareholders meeting *45*

V. Lutsyk
Arrest of correspondence as undercover investigative (detective) action *46*

E. Manivlets
Factors that affect the formation of criminal procedural law *47*

M. Kikalishvili, N. Ulianova
System of taxation as a subject matter of criminal protection within article 212 of Criminal Code of Ukraine *48*

UKRAINE AND THE WORLD

A. Ahanina
System of special principles adaptation of national legislation on training civil servants to EU standards *49*

T. Anakina, D. Honcharenko
Analysis of legal approaches to hostile corporate takeover in the EU with an emphasis on Germany *50*

O. Stakheyeva-Bohovyk
Approximation of the law of Ukraine in the sphere of cross-border insolvency to the EU standards *51*

LINK OF TIMES: CHAPTERS OF HISTORY

V. Borysenko
Historical and legal analysis of formation of local taxation in Ukraine 52

D. Zabzaliuk
On issues of legal relationships of Danylo Halytsky with crusaders in the middle of XIII of century 53

T. Kurylo, H. Lipak
The concept of marriage and the manner of its establishment on the territory of Ukraine within the Russian empire (XIX – early XX century) 54

M. Lutskyy
Solution to the agricultural problem under the legislations of the West Ukrainian People's Republic (ZUNR) and the Ukrainian National Republic (UNR): comparative aspect 55

Yu. Khizhniak
Pontius Pilate sentence as a demonstration judicial tyranny (the novel by Mikhail Bulgakov "The Master and Margarita") 56

TRIBUNE OF DOCTORAL CANDIDATE

O. Fedotov
State fiscal service: legal grounds of creation 57

O. Basai
Compulsory licensing in the pharmaceutical industry 58

TRIBUNE OF YOUNG SCIENTIST

T. Filipova
Genesis of administrative procedures in the field of protection of economic competition in Ukraine 59

I. Dymon
Administrative suspension as the administrative enforcement measure: nature, value and types 60

O. Ahakerimov
Home detention as a preventive measure: background and contemporaneity 61

V. Bazhanova
The property of private company as the joint property of spouses in the civil law of Ukraine 62

K. Biletska
Personal guarantee as the restriction of the right to freedom of man and of the citizen: philosophical aspect ... 63

Y. Bunin
On the object of crimes against justice 64

D. Volkova
Creation and functioning of civil society organizations in USSR: constitutional problems 65

A. Hryhorieva
Conditions of the determination of the fact of common-law marriage in court hearing and evidences to prove it 66

S. Hula
Current state of public control over government procurement 67

L. Davyd
Legal content and functions of industrial design as an objects of industrial property 68

M. Domanska
Theoretical and practical problems of identifying the persons involved in cases of changing of civil capacity of an individual 69

T. Duzinkevych
The problem of bringing non-party interveners in civil procedure of Ukraine 70

T. Luzan
Issue in law as a criterion of division of cases of civil jurisdiction 71

Y. Zhukova
The principle of procedural economy in the system of principles of administrative legal proceedings 72

L. Zinyak
Legal regulation of international cooperation of the states in military sphere (general historical review) 73

CRITIQUE AND BIBLIOGRAPHY

O. Kyiyvets
Review of the monograph by Antsupovoya Tatyana Oleksandrivna "Procedural law council of Europe: principles, theory and practice" 74

METHODOLOGY OF THEORY AND PRACTICE OF JURISPRUDENCE

A. Ovchinnikova,
Doctor of Arts, Professor, Department of Theory of State
and Law of the National University "Odessa Law Academy"

CONCEPTS OF LEGAL CULTURE: NOTION, STRUCTURE, CONTENT

The article deals with understanding of the legal culture as a system of concepts. From the standpoint of informative-semiotic approach to the legal culture, concepts are used as translators of legal values, means and ideas. The structure of legal concept includes notion, passive (historical) and active (actual) elements, which also determine levels of comprehending of concepts. The content of concepts includes notion, stereotypes and values of legal sphere.

Formation of the modern methodology of understanding the rights requires consideration of the multiplicity of its nature and irreducibility to a single concept, even extremely wide. From this perspective, as a defining principle of pluralism of philosophical and legal and general theoretical discourses aims to show the epistemological plurality of the very concept of law. It therefore expressed the opinion that the various legal categories used to display differing legal sphere is not so much the content and volume, as the scope of application.

Meanwhile, the continued relevance of the question remains the categorical status of legal culture. Despite the diversity of approaches to this fundamental phenomenon of the legal life of any society, it should be stated that the problem of its substantive content, functioning, theoretical and philosophical and legal thinking is still open. The reason for the undying interest in the legal culture is defined by the fact that it acts primarily as intersubjectivity sphere of human life appears as a system of concepts as a special meaning, forming the boundary between legal and reflections by unlawful.

Thus, the purpose of the present article is a system to identify the concepts of legal culture in order to reveal its contents are not using structural and functional analysis and from the standpoint of the phenomenological vision of law.

V. Zavalniuk,
PhD,
Professor of Theory of State and Law
National University "Odessa Law Academy"

LEGAL TRADITIONS AND UNDERSTANDING LEGAL REALITY ANTHROPOCENTRIC

National character of the Ukrainian people is fertile ground for laying the foundations of a national legal anthropology. Natural environment, and geopolitical position of Ukraine, and the nature of family relationships with the specific features of life and the dramatic events of history, and the specificity of cultural processes. Anthropocentric understanding of the legal reality is a close and natural for the Ukrainian people.

The legal traditions of Ukrainian people rooted immemorial. Will hardly prove that the formation of the modern Ukrainian state and its prospects as the rule of law, the history of human rights and freedoms in Ukraine should be understood in its relationship with national traditions.

As a result, given specified above definition of the term "legal mentality," we will use such his understanding: the legal mentality – a defined natural, historical and social conditions being relatively stable picture of the legal reality and stereotypes legal behavior inherent in social communities of different levels and origin (ie you can talk about legal mentality of ethnic groups, professional and age groups, local communities, etc.).

Postulates anthropocentric perception of the world was near and natural for the Ukrainian people, and this explains their approval in public opinion over many centuries of history.

Consequently, the national character of the Ukrainian people is fertile ground for laying the foundations of the national legal anthropology. Development legal concepts promoted features worldview and spirituality of the Ukrainian people, which are caused by many factors, among which can be called and the environment, and geopolitical location of Ukraine, and the nature of the relationship with specific features of items, events and dramatic history, and specific cultural processes. Anthropocentric understanding of the legal reality is a close and natural for the Ukrainian people.

CONSTITUTION OF UKRAINE IN ACTION

S. Matvieiev,
Candidate of Law Sciences,
Associate Professor at the Department of Theory and History of State and Law,
Luhansk State University of Internal Affairs named after E.O. Didorenko

LEGITIMACY AND LEGALITY AS FEATURES OF THE STATE POWER

Activation of social life in modern society, increasing role of political and legal processes have caused some openness of terminological systems in many social sciences, which is manifested primarily in using special concepts in the common language. Modern public communication abounds with statements of government officials, politicians and just ordinary citizens, containing a large number of legal, political and administrative terms, the meaning of which is often misunderstood. This observation is also true for a "legitimacy" concept – a term that has almost came into general use and everyday speech.

Term "legitimacy" is sometimes translated from French as "legality," whereby its content is replaced by the content of legalization. However, in our opinion, in this case it refers to the "legality," which means the legitimacy of the state power and involves formation, organization and functioning of the state power in accordance with applicable legislation in the country: the constitution and other laws and regulations. Based on the analysis, it can be stated that such an interpretation for identification of legitimacy and legality of the state power, is not quite accurate. "Legitimacy" and "legality" are close but not identical concepts. The first one is of appraising, ethical, and political nature, the second one is legal and ethically neutral.

Along with the existing complex approaches to the definition of "legitimacy" in modern legal literature, the issue of the need of legitimacy of the state power as its compulsory feature is debatable as well.

The author believes that the state power should be built and operated on the basis of legitimacy and legality as integral signs for the state of democratic orientation.

N. Barbashova,
Doctor of Law Sciences, Associate Professor,
Associate Professor at the Department of Economy Law,
Donetsk State University of Management

REGIONALIZATION OF THE UNITARY STATE

Today in Ukraine there are significant policy changes which are associated with the course of development. A central issue of domestic and foreign political discussions is the type of government and the territorial integrity of Ukraine. The paper studies the decentralization of public authority in a unitary state. In this case decentralization aims to build a regional power. It was found that the problem of transformation of the existing type of government is primarily caused by the dominance of the unitary principle of public administration.

At the domestic level devolution of public administrations is the "appropriate response" to the integration process, and it means the identification of individual territories that have "special" features such as political identity or ethnic, historical, geographical, economic characteristics. Central government is forced to meet the requirements of the regions for expansion of domestic and international jurisdiction. The best way of reforming the current system of government should be the decentralization of public authority. In the unitary system of government, these transformations should aim to create a regional power. Because of the relative homogeneity in Ukraine (it is relatively smooth change of the national composition, religious identity and historical identity of regions), identification of regions should coincide with the existing administrative and territorial system. It was established that in the unitary state model the promising direction of regional management modernization is the creation of regions with legislative powers as territorial units with its legal personalities and direct elections for heads of regional administrative centers. In this context, the regions are endowed with legislative powers for the organization and regulation of their authority on their territory. In fact, we are talking about the possibility of creating a regional power.

B. Kravchuk,
Candidate of Law Sciences, Associate Professor,
Associate Professor at the Department of Theory and History of State and Law,
Law Faculty,
Lesya Ukrainka Eastern European National University

THE PROCEDURE FOR APPOINTMENT AND ELECTION OF JUDGES AS AN ELEMENT OF THEIR CONSTITUTIONAL LEGAL STATUS

In the modern conditions the issue of appointment and election of judges on their positions acquires outstanding actuality. There is no doubt that the authority of all judicial system directly depends on professionalism of certain judges, on fair and impartial implementation of their duties. The procedure for appointment and election of judges on their positions in Ukraine today causes discussions not only among the representatives of legal science and practitioners but also among ordinary citizens.

With development of science of constitutional law in Ukraine, it becomes obvious that, considering constitutional legal status of judges, an important issue is the procedure for appointment and election of judges on their positions. It is possible to assert that the exact category "constitutional status," getting wide recognition, is the scientific instrument of determining place and role of judge not only in the judicial system but also in society and state. This category enables to educe the basic structural elements of constitutional legal status of judges and outline their features.

Constitutional and legislative requirements, which establish the procedure for election of judges on their positions, determine the granting of the specific rights and duties, and also guarantees that allow judges to carry out the function of justice effectively.

N. Bocharova,
Candidate of Historical Sciences,
Professor at the Department of Social and Humanitarian Disciplines,
Dnepropetrovsk State University of Internal Affairs

FREEDOM OF CREATIVITY AS CONSTITUTIONAL VALUE OF INFORMATION-ORIENTED SOCIETY

The article is devoted to the determination of maintenance of freedom of creativity from the point of view of constitutional axiology, and to the analysis of its basic elements and borders of the constitutional regulation. It is emphasized that freedom of creativity gains the character of actual constitutional value of global significance, which stipulates basis of development of personality in the new terms of domination of informational technologies and innovations.

The author shows that the freedom of creativity envisaged in constitutions means creation of the conditions for the use of this freedom, foremost, by constitutional establishment of legal protection of intellectual property, which already acts as an independent object of the constitutional regulation. Freedom of creativity is a right which enables work of researchers, inventors, and any other creative workers. The freedom to dispose the results of the creative work consists in possibility of independent determination of legal destination of result of creative activity. It also includes a competence on the defence of the broken rights on the results of creative activity, including defence of intellectual property. Insufficient attention in relation to the protection of rights for the creators of intellectual products conduces to the losses of material, moral and political character. In this connection freedom of creation and its structural elements become important state and legal standards at the modern stage of community development.

REFORMS IN UKRAINE

M. Vasylenko,
Doctor of Laws, Doctor of Physical and Mathematical Sciences,
Professor, Professor of EU Law and Comparative Law
National University "Odessa Law Academy"

CRISIS OF INNOVATION IN THE UKRAINE IMPERFECTIONS AND IGNORE INNOVATIVE LEGISLATION

In an era of high technology level of economy is largely determined by innovation processes in the country. Today undeveloped innovation infrastructure in Ukraine hampers the development of other related systems, including new knowledge, technologies and production. The lack of systemic economic and legal measures for state support of innovation activity, widespread divergence between private-interest for the creation and development of innovative structures and public interest to control their activities, taxation activities of others – all this creates significant barriers to not only the innovative development of the country but also sustainable development of modern economy country at all.

Innovative developments in terms of neoliberal crisis involves the active intervention of state institutions in economic activity, attracting investments to the innovation sphere, forming close relations and strengthening cooperation between universities, research centers and industry with the support of the state. The negative effects of the decline of innovation development in Ukraine occurred exactly by eliminating the state support of the structures of the state and the legislator. More high-tech technology should take more decisive position in the economic growth of the state and quality development of innovative processes should be considering new technological paradigm and should be provided with appropriate economic and legal support, characterized by efficient public support.

Economic relations in today's economy without state innovation policy tend to reduce the profitability of operations and to reducing long-term projects, and so necessary is the rejection of the neoliberal market doctrine, beyond socio-economic rationality and leads to excessive financialisation of the economy and reduce the role of innovation factor in ensuring economic growth in developed countries until his ousting in less developed countries. In the present circumstances the state, more than ever, must regulate the development of market institutions-organizations, first of all, innovative, all possible economic, legal and political means.

A. Pavliuk,
Student,
Kiev National Economic University named after Vadym Hetman

K. Ilikchiieva,
Candidate of Law Sciences,
Associate Professor at the Department of Constitutional and Administrative Law,
Kiev National Economic University named after Vadym Hetman

UNIFIED REGISTER OF ADVOCATES OF UKRAINE: ISSUES OF FURTHER REFORMING

In the article the author defines the basic issues of functioning of the Unified Register of Advocates of Ukraine. At the beginning of the article the history of the Register introduction at the state level is described. Its further development is disclosed and characterized. The value of the registry for public advocacy institute in general is also determined. Some provisions reveal the reformation and functioning of the registry after the Verkhovna Rada of Ukraine adopted the Law "On Advocacy and Legal Practice." The author describes the present register functioning, the procedure of entering the data and information subjected to the mandatory introduction. The peculiarities of the Association of Lawyers of Ukraine activity in the sphere of maintenance of the register are determined in the article.

The article characterizes the main innovations that were introduced in the Unified Register of Advocates of Ukraine after the establishment of the bodies of the advocates' self-management. The article also gives official statistics recorded in the register and information about lawyers. In addition, the foreign experience of register functioning based on the example of the European Union, the Russian Federation and Armenia is identified.

The author expresses his proposals on further improvement of the Unified Register of Advocates of Ukraine to ensure the completeness and relevance of the information contained in it.

Since this topic is not sufficiently studied in theory, the author tries to analyze the established norms and practice of functioning of the Unified Register of Advocates of Ukraine to determine its value for legal practice. The author proposes the improvement of the registry to its main users: public bodies and people who apply to lawyers for legal assessment. The author outlines the advantages and disadvantages that may regard the proposed innovations.

The functioning of the Unified Register of Advocates of Ukraine is a necessary prerequisite for the development of the legal state. It allows carrying out registration of the issued certificates on the right to be engaged in advocacy and to monitor the overall field of advocacy. However, the topical question is still its updating. This issue in the legal regulation remains under advisement of lawyers, who must timely update information in the registry about themselves.

A. Pakhomova,
Candidate of Law Sciences,
Assistant Professor at the Department of Civil Law Disciplines,
Bila Tserkva National Agrarian University

FEATURES OF INFORMATIZATION OF AGRICULTURAL SCIENCE IN UKRAINE

The article reflects the peculiarities of the formation of the information environment in the field of agricultural education and research, focuses on the issues of legal regulation and management of informatization of the sector of agro-industrial complex of Ukraine.

The author states that informatization of the agro-industrial complex in the sphere of scientific and technological progress in the first place should be designed to focuse on meeting the challenges of planning and monitoring the progress of experiments; on processing, data analysis, research and engineering calculations; on development of automated systems management by testing agricultural machinery; on establishment of databases and information-retrieval systems in the sector of innovations in agriculture.

The article reveals the lack of legal possibilities, clearly regulated by legal norms, in scientific and technical informatization spheres of the agricultural sector.

The author presents general recommendations to improve current administrative and legal regulations for informatization of agricultural science. Also the author proves the necessity to develop the program of informatization of the agricultural education and science in the current period.

Moreover, the analysis of legislation and research papers on informatization of agriculture in general, and of educational and scientific sectors of agro-industrial complex in particular, gave the author the opportunity to identify the main ways of informatization in agrarian science.

These main ways should be:

An informatization of agricultural science management through the full computerization of the Ukrainian Academy of Agrarian Sciences as the central governing body of the agricultural science;

Total computerization of research institutions as primary links that implement the research work in the agricultural sector;

Provision of the exchange of information between science and agriculture directly by creating a single information resource of Agricultural Sciences.

STATE ADMINISTRATION AND LOCAL SELF-GOVERNMENT

K. Bondarenko,
Candidate of Law Sciences,
Associate Professor at the Department of Administrative and Financial Law,
National University "Odessa Law Academy"

ON THE ISSUE OF DEFINING THE OBJECT OF STATE MANAGEMENT

State management always was and still remains the central category of the administrative law of Ukraine because the administrative law regulates legal relations in the field of the state management. Despite the great number of scientific researches of national scientists concerning the definition and the essence of the state management, its specific features, and also the subject and the object of the state management, by this day, the administrative law science have not reached the single position on those categories. To our mind, the research of the term "the object of the state management" as one of the elements of the state management is relevant today.

Making a research of the object of the state management as a special type of social management, undoubtedly, socially organized society would be one of the elements of the object. We think that socially organized society is a static form of the society in general, and legal relations between its members would be its dynamic content, at the same time the form and the content of the society are inseparably connected elements, because the socially organized society cannot be imagined without numerous kinds of legal relations, and legal relations are impossible without the socially organized society.

On the basis of the results of research, it is possible to say that the object of the state management is a specific system which consists of the socially organized society (physical persons and their collectives, legal persons and state bodies), relations inside this society between its members, and also legal states (for example, internal security, national security).

E. Bilokur,
Postgraduate Student,
Department of Administrative and Financial Law,
National University "Odessa Law Academy"

ON THE DEFINITION OF THE CONCEPT "THE FUNCTIONS OF THE BODIES OF PUBLIC ADMINISTRATION"

This article contains the theoretical research of such legal category as "the functions of the bodies of public administration." The author's attention is paid to some aspects of the definition of the concept "functions of the bodies of public administration," which is important for their correct comprehension, usage and legal confirmation. The theoretical and practical significance of this subject matter is determined by the place of the functions of the bodies of public administration in the process of public administration. The analysis of this definition creates the necessary prerequisites for creating an effective, optimal organizational structure of these bodies and for assigning their attribution, necessary for the implementation of their functions, as well as forms and methods of their administrative activities.

The notion of "the functions of public administration" as the general category regarding "the functions of the bodies of public administration" is being defined. The common and distinguishing features of "the functions of the bodies of public administration" are being marked out as well as their essence and identities are being revealed. Such categories as "the functions of the bodies of public administration," "the functions of the executive bodies," and "the functions of state bodies" are differentiated.

The article gives the author's definition of "the functions of public administration" on the grounds of this theoretical research. It is also noted that the importance of proper understanding and clear definition of the functions of government first of all ensures the practical implementation and realization of the functions of government that are directly caused by functions and objectives of the state as a whole. Secondly, it provides creation of an effective organizational structure of the public administration and the implementation of the tasks for the achievement of which it operates. Thirdly, a proper understanding of the functions of the bodies of public administration will enable the subject of rulemaking to define functions and powers required for these functions' implementation in statutory and constitutive acts more carefully.

I. Sopilko,
Candidate of Law Sciences, Associate Professor,
Director of Law Institute,
National Aviation University

ON THE NECESSITY OF DEFINITION OF STATE INFORMATION POLICY

Globalization in the field of information is the most controversial manifestation of contemporary reality. On the one hand, many researchers describe such positive aspects as formation of information society, deregulation of information relations and formation of free information market. Another group of researchers focuses on the formation of a balanced state information policy (SIP), development of reliable mechanisms of its regulation, development of information security.

It is repeatedly emphasized that there is an urgent need to adopt paradigmatic guidelines of information law science, in particular, the formation of conceptual and categorical system, which should be the basis for the revised concept or strategy of information policy. Additionally, the need for the adoption of this document is indicated by other researchers.

Without a clear definition, it is impossible to determine the content and subject of scientific discussion and thus prevent the effective practice of law application in the information sector.

The above serves as argumentation of our opinion that the concept of state information policy should be determined on a scientific level, processed and accepted by the scientific community and secured in the legal act – Concept of State Information Policy of Ukraine, and later codified in the act – Information Code of Ukraine.

Synthesizing theoretical works on this topic, the main theoretical problems that hinder forming paradigmatic definitions are:

– Who are the subjects of information policy;

– Who act as an executor of IP;

– Correlation of information policy and information security;

– Correlation of state policy in general and information policy in particular;

– Place and the role of specific individuals in shaping and realization of IP;

– What is the structural and functional model of IP;

– What is the system of SIP.

A. Korovaiko,
Postgraduate Student,
Department of Administrative and Financial Law,
National University "Odessa Law Academy"

ADMINISTRATIVE AND LEGAL BASIS OF ORGANIZATION AND FUNCTIONING OF CABINET OF MINISTERS OF UKRAINE IN THE FIELD OF FOREIGN AFFAIRS

The relevance of the paper's topic is determined by the significant role and importance of the Cabinet of Ministers of Ukraine in ensuring of foreign policy and public administration in the field of foreign affairs, cooperation with other state bodies.

The paper is devoted to the analysis of the organizational and legal principles of state administration implemented by government in the field of foreign affairs, principles and methods that form the foundation of the proper functioning for supreme body of executive power. Particular attention is paid to the peculiarities of the coordination of the relations between government and other subjects providing state administration on issues of foreign policy.

In the article topical questions are raised. Thus, author emphasizes the importance of issue concerning proper organization of activity of the Cabinet of Ministers in the field of foreign affairs and effective collaboration with Cabinet's structural departments as well as with President of Ukraine and Ukrainian Parliament. The question of provision of political responsibility of government's authorities and profile ministries for an inefficient realization of public policy is still vital.

In order to improve the work of Cabinet of Ministers of Ukraine as a subject in the field of foreign affairs it is appropriate to increase the intensity of the establishment and functioning of relevant government commissions, interagency groups, advisory boards in the field of foreign affairs to increase the level of public participation and public control. For the purpose of enlightenment of Cabinet's work an intensive involvement of the media is to be provided to cover the issues of foreign affairs and reveal public events in foreign policy.

O. Koicheva,
Postgraduate Student,
Department of Administrative and Financial Law,
National University "Odessa Law Academy"

ORGANIZATIONAL AND LEGAL SUPPORT OF FINANCIAL AND CONTROL ACTIVITY OF ACCOUNTING CHAMBER OF UKRAINE

With the global reform of all areas of society, financial and control activities over the expenditure of public funds gain special importance. It is an important factor in the stabilization of the political and economical situation in our country today. Market relations require strengthening of public financial control and its social importance as well as suitable improvements, because the public authorities bear an increasing number of functions considering protection of financial rights and interests of society, the use of appropriate measures, material and financial resources to prevent abuse and theft. Legitimate and effective use of public funds requires effective financial control.

This article addresses the problem of organizational and legal support of the control over the Accounting Chamber of Ukraine.

The author examines the organizational structure of the Accounting Chamber of Ukraine and its territorial offices. This paper analyzes the mechanism of appointing members of the Accounting Chamber, which is enshrined in the relevant law. The author considers the powers of members of the institutions and their professional duties. Special attention is given to the independent activities of the Accounting Chamber including their judicial immunity as a guarantee of non-intervention of other authorities in their activities.

The article highlights suggestions for establishing responsibility of the Accounting Chamber, the consolidation of the procedures and mechanisms of the proceedings at law.

It is proposed to draw attention to the territorial offices of the Accounting Chamber and the mechanism of their creation. It appears necessary to extend the powers of local offices and to change the mechanism of their work from centralized towards decentralized one. The Law of Ukraine "On the Accounting Chamber" should contain a separate chapter to determine the order of creation, powers, duties and responsibilities of employees of regional branches.

Reforming the organizational and legal support of the Accounting Chamber in the future should lead to the fact that it will become an effective mechanism for monitoring the receipt and expenditure of the state budget of Ukraine.

P. Makushev,
Candidate of Law Sciences, Associate Professor,
Dean of the Law Faculty,
Dnipropetrovsk University of Humanities

FUNCTIONAL PECULIARITIES OF THE MANAGEMENT ACTIVITY OF THE STATE EXECUTIVE SERVICE AGENCIES

Creation of the effective and stable system of public authorities is an important key factor of the progressive state creation. Therefore, constant transformation, reformation and search of the place of the State Executive Service in the structure of the state authorities determine the necessity of development of scientific and theoretical foundations. An important issue in this context is the functional aspect of the problem, which consists in the functional peculiarities of administrative activity of the State Executive Service implementation.

Before analyzing the functional peculiarities of management of the State Executive Service as the executive authority, the author reveals more general notion – "government agency." It is connected with the fact that the executive authority is one of the varieties of government agencies. Therefore, only after the determination of general features that are common to all public authorities without exception, it is possible to analyze executive authorities, and in particular the State Executive Service agencies.

Listing all the specific features of a public authority, the author noted that it is a part of the state apparatus, which directly and on behalf of the state performs its tasks and functions through the implementation of the public authority in the relevant area of the state activity.

The author analyzed only the main, defining functional features of the State Executive Service agencies' activity performance as the state executive authority, defined the powers and structure, studied the content of the interrelation that exists between the structural units of the public authority and the state of its main functions implementation.

V. Volik,
Candidate of Law Sciences,
Donetsk City Council

STATE POLICY IN THE SPHERE OF CITY TRANSPORT

Today transport is very important in our life. There are many functions of transport such as: economical, social, defensive and cultural. The state policy in the sphere of city transport is very significant. It is the basis for transport management. The city transport is an important part of transport system of the country. Effective public administration of transport promotes normal development of transport system of the state. The state policy defines the direction of development of city transport.

Development of Ukraine and its European integration need reconsideration of an essence and a role of transport in state management. The author analyzes Ukrainian legislation and believes that some of the principles of a state policy in the sphere of transport are ambiguous.

The author considers that the list of bases of a state policy contained in the legislation is not general and universal. In Ukraine the list of the principles of a state policy in the sphere of city transport is absent. The principles of a state policy in the sphere of city transport contained in the Ukrainian legislation repeat each other, and in some cases contradict each other. The author considers that creation of the uniform principles of a state policy in the sphere of city transport is very important. Therefore it is necessary to create and introduce the uniform principles of a state policy in the sphere of city transport.

O. Syniehubov,
Candidate of Legal Sciences,
Associate Professor at the Department of Civil and Legal Disciplines,
Training and Scientific Institute of Law and Public Communications,
Kharkiv National University of Internal Affairs

PROSPECTS FOR DEVELOPMENT OF THE INSTITUTE OF IMPLEMENTATION OF NON-PROPERTY CHILDREN'S RIGHTS IN UKRAINE

Nowadays, the situation concerning realization of children's rights is extremely vulnerable because they do not have either the right to vote or the right to influence important decisions and institutions that encourage the changes in political and economic life. The situation is aggravated by the attitude of parents to children as to their property, and by the fact that the intervention of the state in their relationship is considered as the violation of parents' rights because it is extremely difficult for parents to accept the fact that children also have rights, and their interests may differ from those of their parents.

However, the social rights of children (to life and development, education, entertainment, health and welfare, the right to protection – to be free from violence and abuse, as well as from economic and sexual exploitation) are recognized by our state. In practice, children do not have mechanisms to influence the political, social and economic power, which makes them vulnerable – their rights are often ignored in the development of legislative base, containment of resources, and determining the direction of policy.

Also, children are vulnerable if their rights are violated because they have no access to independent sources of advisory support and protection, and because there is less likelihood that they will be heard as adults, if they would complaint. The vulnerability of children is absolute in the field of public and political rights, which are often not recognized and therefore are not respected.

Therefore, to ensure the realization and protection of children's rights, in our opinion, it is appropriate to adopt the Law on Children's Rights. This law is required to determine children's rights, their classification: property and personal non-property rights, with their obligatory division into subtypes. Also we should provide methods, conditions, forms of implementing children's rights and ways of their guaranteeing, indicating the subject composition (state or local authorities, private bodies, authorized persons, etc.). As a result, it is necessary to consolidate the norms concerning protection of children's rights and minors' liability.

S. Synchuk,
Candidate of Law Sciences, Associate Professor,
Associate Professor at the Department of Labour, Agrarian and Ecological Law,
Ivan Franko National University of Lviv

ON DISCUSSION ABOUT STATE'S "SOCIAL RESPONSIBILITY" IN SOCIAL SECURITY LEGAL RELATIONS

Scientific conclusions, formulated in the article, are the author's attempt to ground his personal vision of the solution of discussion on the possibility to recognize the state to be socially responsible subject in social security legal relationships on the whole.

Two approaches of scientists' researchers considering problems of social security law of both soviet and modern periods are thoroughly analyzed in the article. The author's substantiations of socially responsible subjects differ because of conceptions used by scientists for finding out the system of social security legal relations and branch of legal relations which were the object of scientific interest. The first approach: the state is the subject of branch legal relations. The second approach: the state's legal personality in branch legal relations is realized through competence of specially created subjects or by granting certain authorities to state bodies or local self-government bodies.

The author critically analyzes the conception of material, property and subsidiary responsibility in the context of arguments that such responsibility is the ground to determine the state to be socially responsible subject in certain legal relations. The fact, that the state establishes conditions of social security and legislative limitations of person's right realization, creates the system of bodies, which are authorized to grant social payments etc., also proves that state performs functions of guarantor of realization of the rights which are recognized or proclaimed by it.

In the article two levels of interpretation of the notion "social responsibility" of the state are proposed. According to the first, the state is the subject of constitutional social responsibility which determines its status of guarantor of realization of the person's right to social security. The second level is based on the conclusion that state's legal personality in social security legal relations has mostly political, but not legal character. Authorized bodies, institutions or organizations which act on behalf of the state or by its proxy are direct subjects who perform obligations – authorities with the aim to provide realization of constitutional human right to social security in branch legal relations.

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

COPYRIGHT IN THE SYSTEM OF HUMAN RIGHTS

In the modern period of formation of Ukraine as a democratic, social and legal state, which is complicated by several factors, such as economic instability, low effectiveness of management structures, social conflicts and more, makes the topic of the article relevant.

Formation of civil society in Ukraine is impossible without an adequate guarantee of individual rights. It is clear that the declaration of rights and their enforcement are two different things. On the basis of the Constitution of Ukraine above all concerning human rights and freedoms, it is necessary to adopt the laws establishing an effective mechanism for the implementation of these rights and freedoms, including copyright.

In our opinion, the copyright should be considered among economic and cultural rights of the individual.

Art. 57 of the Constitution of Ukraine guarantees freedom of literary, artistic, scientific and technical creativity, claims protection of intellectual property, copyright, moral and material interests which arise from different types of intellectual activity.

Convention Establishing the World Intellectual Property Organization (1967) in p. VIII, Art. 2 indicates that intellectual property includes rights relating to: literary, artistic and scientific achievements; sound recordings, radio and television broadcasts, inventions in all fields of human activity, scientific discoveries, industrial designs, trademarks, service marks, trade names and commercial designations; protection against unfair competition; and all other rights relating to intellectual property in the industrial, scientific, literary and artistic fields.

At the national level, Art. 54 of the Constitution of Ukraine declares: freedom of literary, artistic, scientific and technical creativity; protection of intellectual property rights, copyrights, moral and material interests as results of all sorts of creative activity. According to the above, the basis of these rights are freedoms, as creativity and especially productive creative work is impossible without freedom of creators' outlook as well as protection and defence of their rights, filling of moral and material rights with the content.

The place of copyright in the system of rights of individuals according to the traditional classification of human and civil rights should be a determined as one of the basic cultural rights, as guaranteed by the state on the level of constitutional norms.

PROBLEMS AND JUDGEMENTS

S. Andreichenko,
Candidate of Law Sciences,
Associate Professor at the Department of International Law
and International Relations,
National University "Odessa Law Academy"

THE CONCEPT OF ABSOLUTE LIABILITY IN INTERNATIONAL LAW

The article is devoted to the study of the theory of absolute liability in international law. The author examines the legal nature, content, characteristics of absolute liability. The main differences between absolute liability and state responsibility for internationally wrongful acts are determined.

During examination of state responsibility for wrongful acts, the International Law Commission (ILC) came across the issue of responsibility for acts not prohibited by international law and decided to create a new topic apart from that of responsibility for wrongful acts. So the ILC started to consider "International Liability for the Injurious Consequences arising out of Acts Not Prohibited by International Law" in 1973 and completed its work in 2006.

Most of the countries of civil law tradition use the term "responsibility for risk" and "strict liability" or "absolute liability" in Anglo-American law. Liability for lawful acts is sometimes also called "objective liability" because, if no obligation has been violated, the subjective element of culpa cannot possibly exist. However, the breach of many international obligations does not require culpa and the correspondent responsibility is also objective, so trying to distinguish liability from responsibility by its "objective" character may lead to ambiguity. The difference between "objective responsibility" and "liability" is that, in the former, culpa is irrelevant but there is fault in the sense of a breach of obligation, whereas, in the latter, there is no breach of obligation (and therefore also no culpa). One is ex delicto and the other sine delicto.

The general examination of "liability" shows the absence of fault and the presence of risk. This combination makes possible the balancing of the different interests, as there is nobody to blame for subsequent damage and risk is accepted from the beginning by all concerned – as long as potential victims are compensated.

N. Anischuk,
Doctor of Law Sciences, Professor,
National University "Odessa Law Academy"

REALIZATION OF THE ADVOCATE PROFESSION BY WOMEN IN THE UNITED STATES OF AMERICA: HISTORY AND PRESENT DAYS

The article discusses the problems of implementation of the advocate profession by women in the United States of America. Author explores historical retrospective of American women struggle for their participation in the legal profession. Attention is drawn to the fact that in the United States of America women acquired the right to seek legal practice in each state separately. The first state in America in which a woman became a lawyer was Iowa (1869). Attention is given to the first women lawyers in the United States of America, their professional paths in advocacy. The article emphasizes that the first female lawyers in the United States of America were Arabella Mansfield, Ada Kepley. First female African-American lawyer was Sharlotta Rey. The first woman, who acted as a lawyer in the Supreme Court of the United States, became Belva Ann Lockwood. The first deaf-mute woman to become a lawyer was Claudia L. Gordon.

The current state of the feminization of the legal profession in American society is explored. Attention is drawn to the fact that the United States of America is the home of the "female advocacy" with yearly increase of the number of women lawyers. In 1950, there were 3.5% of women lawyers, while in 2013 they consisted 34% of lawyers. Outstanding contemporary American women lawyers: Gloriya Allred, Lisa Blatt, etc. are recalled in the article. The article highlights the challenges faced by American women lawyers, in particular, difficulties considering the promotion. The reason is not their work itself, but the fact that the family circumstances often lead to the fact that a woman chooses a less ambitious career, rather than, for example, performances as a lawyer in the Supreme Court of the United States. The article also considers proposals of women lawyers of the United States of America on ways to improve their professional career. In particular, it is proposed to introduce a positive experience of the famous lawyer campaigns for United States of America lawyers who are mothers to increase holiday childcare, provide flexible working hours for mothers-lawyers, and conduct special courses devoted to the art of combining family and career.

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

ABOUT THE EFFECTIVENESS OF LEGAL REGULATION OF THE LEGAL PROFESSIONAL BODIES' STATUS

The paper is devoted to the problem of lack of adequate effective regulations of the legal professional bodies' status. It is obvious that due to the excessive politicization of these institutions at the present stage, they are not regulated according to the principles of independence, activities of self-government, the rule of law and respect for human rights and freedoms.

The author argues that to bring Ukrainian legislation into line with European standards, voluntary admission of lawyers to National Accreditation Agency of Ukraine must be proposed, which in this case will not be considered as an instrument of pressure on the attorney. Since structure and legal status of the legal professional bodies allows them to properly implement their authority, it is necessary to abandon the practice of creating additional not statutory bodies to shift these powers on them.

In author's opinion, legal professional bodies should adopt professional standards and protect the independence and interests of its members; ensure the independence of lawyers and enhance and protect justice and the high status of the legal profession, in particular, implement the protection of honor, dignity and reputation.

The approach suggested in the paper allows the author to determine that legal professional bodies play a vital role in the maintenance of professional standards and ethics, protecting their members from persecution, unjustified restrictions and infringements of their rights, providing legal assistance to all who need it, and cooperating with the government and other institutions to achieve the goals of justice and the public interest.

Also, the author provides the recommendations necessary to improve administrative and legal regulation of the legal professional bodies' status.

L. Batanova,
Candidate of Law Science,
Department of Maritime and Customs Law,
National University "Odessa Law Academy"

DEFINITION OF THE CONCEPT "FINANCIAL CONTROL IN CUSTOMS": THEORETICAL AND LEGAL ASPECTS

The article is devoted to the definition of the concept "financial control in customs." Scientists studied approaches to the definition of the concept of "financial control." The author supports the opinion of those scholars who determine how to resolve the financial control of legal norms and activities of authorized subjects to verify compliance with the requirements of legislation in the sphere of financial activity. These issues remain the subject of scientific debate and should be solved at the legislative level. "Financial control in customs" is proposed as the method to understand how to resolve the legal standards activities of customs officials to verify the authenticity of the declaration of goods, vehicles for commercial purposes, which moved across the customs border of Ukraine, as well as the fulfillment of the declarants' financial obligations to the state. Definition is formed based on the fact that control over the customs payments in budget is and will remain one of the major problems associated with customs and with adopting measures for the timely, accurate, complete accrual and payment of customs payments by taxpayers, taking measures for their compulsory collection. This definition should be considered in the process of preparation of legislation, particularly in the preparation of the draft Law of Ukraine "On Financial Control in Ukraine," projects of other laws and regulations governing the organization and implementation of financial controls. In order to improve financial controls in the state customs it is necessary to seek solutions to complex issues, such as the fight against customs violations (in particular reducing the customs value of goods, false declaration), prevention and counteraction to legalization (laundering) of proceeds from crime and other offenses in the financial sector in the movement of goods, vehicles for commercial purposes through the customs border of Ukraine.

H. Blinova,
Candidate of Law Science,
Head of the Department of Civil and Law Disciplines,
Dnipropetrovsk Humanitarian University

INFORMATION PRIVACY IN MEDICAL FIELD

The article characterizes the concept and content of personal data in the medical field, pharmaceutical and medical confidentiality, international instruments and national regulations which define the legal regime of governing the information and the manner of its use. International principles of confidentiality of medical information about patients' health were formed back in the 40s of the twentieth century. The highest social value in all countries of the world is human life and health, status of information considering them is an important component of the social characteristics of the citizen as a participant in all social relations. Protection of the privacy of individuals in the medical field is held within legal regimes of medical confidentiality and personal data.

The author defines medical confidentiality as information about disease, medical examination and examination results, intimate and family aspects of life of citizens, as well as any other information that became known to the medical officer or other person in connection with their official obligation bonds in the process of medical care. Domestic legislation requires clear instructions in regard to keeping medical confidentiality, and the list of forms on the transfer of such information, the permission of the primary health information; obligations of health professionals for nondisclosure of medical confidentiality.

Y. Maksymenko,
Candidate of Law Sciences,
Associate Professor at the Department of Theory of State and Law,
National Academy of Internal Affairs

LEGAL REGULATION OF INFORMATIONAL RELATIONS IN UKRAINE: STATUS AND PROSPECTS

Legal regulation of social relations in the field of human rights and freedoms of man and the citizen de jure complies with international and European standards and is implemented by using such a type of legal acts as the Law of Ukraine. However, de facto standard for information rights and freedoms protection, including the right to access to information and to protection of personal data is poor. In contrast, the legal regulation of social relations associated with the protection of information and telecommunication infrastructure is mainly carried out by subordinate regulatory acts and requires coordination with European standards. Quantitative priority of regulatory acts aimed at regulating these informational relations is clearly observed. The peculiarity of the legal regulation of informational relations in Ukraine is characterized by a large number of uncoordinated with each other legal acts of different validity and incompliance of these rules with the Constitution. Some of the most important informational relations, including Internet-related informational relations are regulated by subordinate regulatory acts. A characteristic feature of the national informational legislation is a large amount of declarative rules without a specific mechanism and procedure of their implementation, resulting in a high level of offences. In addition, the numerous blanket laws, abstract, subjective, technical concepts, which require an official explanation or clear consolidation of their definitions in the relevant legal acts, are inherent to current informational legislation.

This analysis necessitates concluding the ineffectiveness of current legal regulation of informational relationships and the need for improving the national information legislation.

M. Hudyma,
Candidate of Law Sciences,
Associate Professor at the Department of Civil and Legal Disciplines,
Law Faculty,
Private Higher Educational Institution "Bukovina University"

PROBLEM ISSUES OF RELEASE TOUR OPERATOR'S (TRAVEL AGENT'S) LIABILITY FOR BREACH OF A TRAVEL SERVICES CONTRACT

The scientific publication covers some cases in which tour operator (travel agent) disclaims all liability to the tourist according to civil contract even if the failure or improper performance of obligations by executor of tourist services took place. The author draws attention to the fact that many travel services contracts of tour operators (travel agents) include exceptional clause on occasions, which do not always come within cases of irresistible nature.

It is stated that the concept of irresistible nature and force majeure are not equal. Thus, the author believes, it does not mean that the travel services contract can include any facts of reality by the free discretion of the parties, as counteragents can purposely foresee the conditions in the contract that exclude responsibilities, although they do not possess signs of inevitability and unpredictability. Thus, tour operators (travel agents) treat such conditions freely at its discretion that is an abuse on their part of their rights and flagrant violation of the rights of tourists as consumers.

Fairly common in practice are cases where the cause of default from obligation of tour operator (travel agent) is a third person involved as a party to perform the contract (in whole or in part). In this regard, if the reason for default or improper execution of the contract of travel services are default or improper fulfillment of the obligations of a third party, that is involved by tour operator (travel agent) to perform the contract in whole or in part, the liability of the tour operator (travel agent) does not occur only in the a situation, when workforce is released from liability as a result of force majeure.

In order to avoid potential contradictions in the execution of the travel services contract, scientist offers to determine clear, complete, detailed list of all the force majeure (phenomena of spontaneous nature, the extreme situations of social character, restrictive acts of public authorities) before the conclusion of the contract and to include them to the contract and properly in terms of their compliance with the concept of irresistible nature.

M. Hudyma,
Candidate of Law Sciences,
Associate Professor at the Department of Civil and Legal Disciplines,
Law Faculty,
Private Higher Educational Institution "Bukovina University"

SPECIFICITY OF SUBJECTS OF CONTRACTUAL OBLIGATION FOR TRAVEL SERVICES

In the scientific article author examines the legal status of the parties and other subjects of contractual obligation for travel services.

Considering the nature of travel services, to its executor are applied special, high demands, which proves his professionalism.

Examining the concept of the tour operator and travel agent activities, scientist concludes that there is no equality between them. The main difference is that the subject of entrepreneurship, conducting the tour operator activities, is independently engaged in the organization and ensuring the creation of tourist products, by involving a third party to perform the contract on the basis of contractual relations between independent tour operator and direct service providers, included in complex travel service. Travel agent performs only mediation of the tourism product implementation. In addition, recently, tour agency activities licensing has been canceled.

As a result of analysis of international acts, local and foreign laws author concludes that tourist is always an individual person.

Analysis of current contractual practice of conclusion of the travel services contract made it possible to make a reasoned inference by scholar that the customer of travel services on behalf of third parties (individuals – tourists) may act not only as an individual but also as a juridical person, which is a customer of travel services.

When the travel services contract is concluded by legal person or a physical person on behalf of a minor or disabled person, contract must establish that the debtor (tour operator, travel agent) shall accomplish exercise not to a creditor (the person who paid for the trip), but tourist – a third party that is entitled to claim from the debtor enforcing obligations for its own benefit. The scientist notices an interesting nature of such relationship, because in this case there is a contract for benefit of third person, the feature of which is that the execution of the contract for benefit of third person may be demanded, as by a person who has signed agreement as by a third party in favor of whom the performance of the contract is defined, unless otherwise provided by law, other legal acts, contract and does not arise from the nature of the contract, with the rules of Art. 633 of the Civil Code of Ukraine extended on these matters.

The conducted research of the legal status of the parties to the contract of tourist services allows specifying their determination defined in the law.

Y. Demyanchuk,
Candidate of Law Sciences,
Humanities and Pedagogical College of Bila Tserkva

CURRENT PROBLEMS OF PUBLICITY IN THE INFORMATION SECURITY LAW

In a study on legal information security it is determined that "the issue of actual and potential threats to information security of Ukraine is adequately determined in the Law of Ukraine "On National Security of Ukraine" and the Doctrine of Information Security of Ukraine. However, on closer inspection, this statement, on the one hand, is true, but on the other hand, is not quite complete.

Despite rather broad regulatory framework of information security, it is necessary to state that measures provided by this framework have organizational, administrative, technical, preventive and penalty nature.

The aim of the paper is to investigate mechanisms for participation of Ukrainian people in provision of information security in Ukraine and effectiveness of these mechanisms.

Every man, often without realizing it, is in a permanent state of decision-making.

It is clear that not only the existence of such objective factor as information influences the process and, more importantly, the result of the decision-making.

Crucial influence on the decision-making process and the final outcome of this process have such factors as psychological and emotional state of the person who makes decision, the degree of awareness of the full consideration of the issues requiring decision etc.

However, information and information influence play a crucial role in the decision-making process. Information support is the dominant, but not decisive one, factor in the process of decision-making and its final result – decision.

Communication at the level of ordinary people has always been and will always be the most effective one against the communication on official and diplomatic levels, even given the same facts, evidences, and arguments.

News broadcast can be blocked by technical, organizational, administrative means, but communication between people can not be banned even by the border, "iron curtain" or other restrictions.

When official diplomacy in the field of information security is more public and relies on civil organizations and ordinary people, the efficiency of its operations will be significantly enhanced.

B. Derevyanko,
Doctor of Law Sciences, Associate Professor,
Professor at the Department of Economic and Environmental Law,
Donetsk Law Institute of the Ministry of Internal Affairs of Ukraine

ON PROVISION OF ADDITIONAL NON-EDUCATIONAL PAID SERVICES BY EDUCATIONAL INSTITUTIONS

At the present stage of development of various sectors of economy of Ukraine, the situation forces educational institutions to make additional funds needed for provision of its core activities by themselves.

Based on the arguments of scientists and foreign experience the author suggests the ways to improve the provision of additional non-educational paid services by educational institutions.

Property of educational institution should be justified – bring educational institution which owns, uses or disposes it greater material and immaterial income and benefits as compared to its own value. The easiest way of ensuring the property payback is providing its temporary free fixed assets at lease to commercial economic entities.

Further additional non-educational paid economic activity is often connected with educational activity (activities to enable the accommodation, food, communications, transportation, provision of necessary materials for consumers of educational services), but also may not be connected with it (activities to lease to other economic entities premises for shops, bookstores, cafes, pharmacies, industrial workshops, barns, etc.). To improve the effectiveness of educational institutions activities the author proposes to expand the list of types of non-educational paid economic activities, but by means of educational activities. To improve the efficiency of property educational institutions it is suggested to transfer property assets, that are not currently used, to the management or lease to entrepreneurs through appropriate contracts. These contracts should carefully determine the term and cost, based on the legal provisions with the participation of the managers of educational institutions' property.

V. Makoda,
Candidate of Law Sciences, Associate Professor,
Associate Professor at the Department of Civil Law,
Law Faculty,
Taras Shevchenko National University of Kyiv

STRUCTURE AND SYSTEMATIZATION OF INTELLECTUAL PROPERTY

The article is devoted to the analysis of the legislation on intellectual property rights, regulation of civil relations which arise between the subjects in the field of copyright and related rights, as well as in the field of industrial property and the problems which arise in protecting the rights and interests of owners of intellectual property rights.

World trade over intellectual property rights expands rapidly and is gaining more and more momentum with each passing day ahead with the development of industrial production.

In today's world there are two systems of copyright: Anglo-Saxon (Anglo-American) and the Roman-Germanic (continental).

Globally, the protection of intellectual property rights, particularly copyrights, long time ago acquired great attention.

The biggest step for protection of copyright rights was made with signing of Berne Convention for the Protection of Literary and Artistic Works (on September 9th, 1886, completed at Paris on May 4th, 1896) by different countries over the Globe.

With the adoption of the Law of Ukraine "On Copyright and Related Rights," as well as other legislative acts on copyright, there was established copyright legal framework, which generally corresponded to international standards.

At the same time, while describing copyright, we should note that along with it appear related rights which may belong to other people. We would like to note that the foundation for the emergence of related rights, in particular, can be a work of the author, which can be extended (used) in various fields.

With the development of economy and the globalization of market relations, all issues related to industrial property and rights that arise from industrial property rights are very relevant.

Commercialization of intellectual property law must be improved, which is necessary for the proper protection of intellectual property nowadays.

O. Kostiuchenko,
Candidate of Law Sciences,
Associate Professor at the Department of Justice,
Law Faculty,
Taras Shevchenko National University of Kyiv

I. Dmytriieva,
Student of the Law Faculty,
Taras Shevchenko National University of Kyiv

THE PRINCIPLE OF COMPETITION DURING PRE-TRIAL INVESTIGATION

The article is devoted to the implementation of the principle of competition in criminal proceedings during the pre-trial investigation. Principle of competition of the criminal trial proceeding is implemented during pre-trial proceedings as well as during trial proceedings. In the pre-trial stage of criminal investigation implementation of this principle has several peculiarities.

It appears that the object of competition in the pre-trial proceedings of criminal procedure is the conflict that arises between the opposite sides of the process on the criminal legal dispute within the criminal legal proceedings.

The author notes that the main characteristic features of competition in the pre-trial proceedings are the procedural equality of the parties and the presence of an independent and impartial court. All other features distinguished by legislators and scientists are covered by foregoing, besides differentiation of the basic functions, which are its essence. The implementation of the principle of competition during pre-trial investigation is manifested in equality of the victim and the suspect. It should be noted that the expansion of the rights of the suspect is only one-sided, not conducive to their equality.

The author states that determined by the laws of Ukraine equality of rights between the prosecution and defense at the pre-trial proceedings require further legislative regulation for their expansion.

The solution of these problems, namely, providing realization of the principle of competition is necessary in such directions: firstly, expansion of the rights of defenders in criminal proceedings; secondly, expansion of the rights of the victim in a stage of pre-trial investigation, thirdly, expansion of judicial control in a stage of pre-trial investigation.

V. Dorohykh,
Candidate of Law Sciences,
Associate Professor at the Department of Administrative Law and Procedure,
National Academy of Internal Affairs

VIOLATION OF CUSTOMS REGULATIONS AND RESPONSIBILITY FOR THEM

Having determined in accordance with Article 3 of the Constitution of Ukraine which states that human life and health, honour and dignity, inviolability and security are the highest social values in Ukraine, the legislator has created the preconditions for arranging urgent issues considering law enforcement system of bodies of state authority, including its administrative and legal component. The fact that, according to part 1 of Article 7, the Customs Code of Ukraine is the constituent of the state issue of prevention and combating customs smuggling, the fight against customs violations, led to the need for implementation of customs activities related to the implementation of the law-enforcement function. The above imposes on officers of customs bodies the special requirements considering their special abilities and skills in combating violations of customs legislation, understanding and knowledge of the methodology of such work.

Analyses of current legislation of Ukraine and general practice of its implementation, of the content and basis of administrative responsibility for customs offenses, their features, concepts, composition, types and system allows reinforcing the legitimacy of legal practice of customs authorities.

Violation of the customs regulations is an administrative crime, constituting wrongful, guilty (intentionally or inadvertently) activity or omissions that infringe on the established procedure of movement of goods, vehicles for commercial purpose through the customs border of Ukraine, submit them to customs authorities for customs control and customs clearance, as well as operations with goods that are under customs control or a control of which is administrative responsibility of customs authorities.

V. Yerokhina,
Student,
Taras Shevchenko National University of Kyiv

V. Volynets,
Candidate of Law Sciences,
Associate Professor at the Department of Labor Law and Social Security,
Taras Shevchenko National University of Kyiv

MEASURES OF PROTECTION IN THE LABOR LAW

The article is devoted to identification of the legal nature and the content of the legal category which is called "measures of protection."

The author argues that since the protection of subjective rights and legitimate interests by some measure of protection is an objective necessity, the science of the labor law faces the task to thoroughly identify measures of protection of these rights and mechanisms for their implementation. This gives particular relevance to the topic of the research.

The article explains the definition of the "measures of protection" as some special measures which aim at restoring the violated labor rights or enforcing the implementation of unfulfilled responsibilities by the subjects of labor relations that do not provide them, without imposing on them any additional duties.

Also, the author gives the basic characteristics of measures of protection and criteria with the help of which protective measures may be distinguished from the measures of legal liability as a part of employment relationships.

The analysis of the Ukrainian legislation in the above mentioned area proves that it is necessary to legally consolidate the concept measures of protection, specify their types and grounds for the application and implementation mechanisms.

Yu. Zhelikhovska,
PhD,
Associate Professor of Civil Law and Procedure
Khmelnitsky University of Management and Law,
private notary

MAIN OBJECTIVES AND PRINCIPLES OF NOTARY

The article investigates the objectives and principles of concepts notaries and their main components. Notary is a kind of legal instrument a precondition for the implementation of civil law trade. Notaries notarial acts performed at the identity and rights of undisputed facts, burglary notarial acts and take measures for the protection of the estate. According to Art. 1 of the Law of Ukraine "On Notary" Notary in Ukraine – a system of agencies and officials entrusted with the duty to certify the law and the facts of legal significance, and perform other notarial acts provided by law, to provide them with legal probabilities. Under this concept in the context of the proposed theoretical framework to understand notaries, which shall state law enforcement and advocacy function that should be carried out in accordance with the content of notarial procedure required by applicable law and procedures of Ukraine. The content of the same activity notaries are law enforcement and advocacy, which the state assigned to the special structure of and to certain officials. This paper analyzes the concept of Notaries, the concept of content notarial activities and the main features of notaries. The basic approaches to classification tasks that perform notarial bodies and their classification. The concept of Notaries principles regarding its participation in the protection of civil rights and interests. Definitely the principles Notaries in Ukraine as they are the basis for modeling the legal standards while combining all the rules and institutions in one area of law. Analyzed classification principles and given its classification because of the participation of a notary in civil ways to protect civil rights and interests.

O. Zhuravel,
Candidate of Law Sciences,
Head of the Course of the Faculty of Training
for Criminal Militia Departments,
Dnipropetrovsk State University of Internal Affairs

ADMINISTRATIVE LIABILITY OF PARENTS OR PERSONS SUBSTITUTING THEM FOR HOMELESS CHILDREN

This article deals with the study of issues concerning features of bringing parents or persons substituting them to administrative liability for homeless children, which was a result of their illegal actions. The author researches the composition of the administrative offense and describes all its elements as a necessary condition for incurrence of liability of parents or persons substituting them for homeless children.

The study determines that the unlawful behavior of parents or persons substituting them is manifested in certain actions, namely in provoking their children's negative anti-social behavior or failure to perform their obligations in relation to the children and failure to create appropriate conditions for their stay.

The result of this illegal activity of parents or persons substituting them is the permanent lack of decent housing for children. For evaluation of this offence it is important to determine a causal link between actions of parents or persons substituting them, and the consequences manifested in a lack of the permanent place of residence for children as an attribute of the objective part of the administrative offense.

Subjects of illegal acts that led to homelessness may be: the minor's father and mother, adoptive parents, guardians and trustees, foster carers.

Wrongful acts which led to the abandonment of children can also be committed by both parents and persons substituting them. In this case, it is necessary to talk about a kind of complicity in the commitment of illegal acts.

Evasion of the duty to maintain the child and leaving him/her on the street as well as the negative influence on him/her or severe child abuse are usually committed in the form of direct or indirect intent.

As a result the author suggested amending the Code of Ukraine on Administrative Offenses with certain rules, which provide for appropriate sanctions in the form of a fine or community service for intentionally actions of parents or persons substituting them that caused homeless children.

M. Zakharenko,
Student,
Law Faculty,
Taras Shevchenko National University of Kyiv

M. Pototskyi,
Candidate of Law Sciences, Associate Professor at the Department of Intellectual Property,
National University "Odessa Law Academy"

THE SPECIAL COURT ON INTELLECTUAL PROPERTY CASES IN UKRAINE: AN ERROR OR NECESSITY?

The article is dedicated to the question of expediency of The Special Court on Intellectual Property Cases establishment. The author proves the expediency of such court basing, firstly, on the experience of foreign countries, for example the Russian Federation, the Great Britain, Federal Republic of Germany etc. The research of the experience of these countries shows that courts on intellectual property cases are the integral and essential part of judicial system.

In addition, the authors put forward arguments for the necessity of such a court in Ukraine. The main arguments are:

1) the legislative lacuna generates the difference in the competence of courts, and as a result – the absence of the common judicial opinion on intellectual property cases;

2) judges in the courts of general jurisdiction do not have enough qualification in branch of intellectual property, so that it leads to delaying of the proceedings in cases;

3) a great number of so called "practical" problems, such as legal uncertainties about judicial jurisdiction of intellectual property cases, the length of the proceedings in such cases is about 2 years etc.

However, the authors also pay attention to challenges, which can arise after the establishing of such a court. For example, there will be a necessity of changing legislation, recharacterization of judges and replanning of state budget.

Nevertheless, the authors insist on the necessity of the establishing of The Special Court on Intellectual Property Cases in Ukraine for the quality improvement of proceedings in intellectual property cases.

D. Krylova,
Student,
Zaporizhzhya National University

L. Shekhovtsova,
Candidate of Law Sciences,
Associate Professor at the Department of Criminal Law and Justice,
Zaporizhzhya National University

LEGAL ENTITIES AS VICTIMS OF CRIMES AND VIABILITY OF INVESTIGATION OF THEM IN VICTIMOLOGY

The article is dedicated to the problem of recognition of legal entities as crime victims and viability of investigation of such cases in victimology. The author affirms that both natural person and legal entity can be recognized as crime victims. To confirm this thought the author gives ideas of legal scholars who studied the issue.

In the present article the author states the notion of victim behavior of legal entity. Victim behavior of legal entity is the complex of actions of its office holders, steering bodies or employees that directly or indirectly provoked commission of a crime which inflicted harm to this legal entity. The author gives its possible types (conflictive, provocative, and lighthearted) and briefly describes them. Classification of legal entities as victims of crime is elaborated and presented in the article (victim is absolutely not guilty; victim with inconsiderable guilt; victim and delinquent are equally guilty; victim has major guilt than delinquent does; victim with criminal behavior; stimulative victim).

The author suggests developing of victimization preventive services toward legal entities and undertakes further study in the field. Alternative definition of crime victims, which comprises both natural persons and legal entities, is suggested in the article. In author's opinion, victim of a crime is a certain natural person or legal entity that was harmed by the crime regardless of recognition of them as victim in criminal proceeding and revelation of the fact of infliction of harm by means of criminal action.

O. Kryshevych,
Candidate of Law Sciences,
Professor at the Department of Criminal Law,
National Academy of Internal Affairs

METHODS OF SWINDLE AT THE REAL ESTATE MARKET

The whole range of methods of swindle actions can be classified according to different criteria. The first one is a sphere of activity of swindlers. The second is the object of the offence which may be money or property rights stated in corresponding (entitlement) documents which, as a result of swindle, come to the possession of a criminal. The method of realization of swindle in the field of the real estate necessarily contains five characteristic elements: receipt of documents that give a right to own or dispose the apartment; receipt of documents that certify personality of victim, keys from an apartment: possession of an apartment; registration of sale; an extract of victim from an apartment. General scheme of swindle at the real estate market is the following: I. 1. Search of victim. 2. "Treatment" of victim. 3. First-time alienation. 4. Final alienation. II. "Building frauds." A company gets land plot in the use and imitates beginning of building works. Money of citizens, received from such sales, is used for personal enriching of leaders of companies, but not for house construction, but when a certain sum is already collected, a building company simply disappears. One of variants of realization of this scheme is the use of organizations of co-investors. III. The use of the fictitious contracts considering the real estate. Such schemes are only parts of more complex ones and are used on the first stage of money laundering – placing of dirty money and granting them a legal status. An obligatory condition is falsification of documents in relation to the object of agreement. Laundering of money of criminal origin takes place by realization of simulated sale of objects of the real estate. IV. Use of complex loans and credit resources. The widespread method of company's replenishment of its turnover is involvement of credit resources. However, a popular mean is a receipt of loan from other company. It is also desirable to pay attention to methods of swindle at the real estate market: 1. Intentional concealment of information, which allows breaking the already concluded transaction at a loss to the customer of apartment. 2. Falsification of documents. 3. Swindle under instructions. 4. Sale of apartment on the plot of a few persons. 5. Default in payment for the apartment. 6. Making false death certificates on living men. 8. Sale of apartment on a clearly erroneous warrant. 9. Operation of purchase and sale of the real estate that can be easily broken. 10. False registration. 11. An apartment is sold together with an owner. 12. One apartment for many owners. 13. Revision requiring payment. 14. Swindles considering with privatizing.

Illegal acquisition of property rights, which allows a guilty person to dispose other person's real estate to a full degree, must be examined as an independent property crime. That is why it seems useful to distinguish such a type of criminal trespass as "swindle in the field of the real estate" into separate part and to complement Art. 190 of the CC of Ukraine with the term: "Swindle by acquisition of right on the other person's real estat".

I. Lagutina,
Candidate of Law Sciences,
Associate Professor at the Department of Labour Law and Social Security Law,
National University "Odessa Law Academy"

THE RIGHT TO PROTECTION OF EMPLOYEE'S PERSONAL DATA

Protection of employee's personal information should enjoy great importance in the exercise of rights and obligations the employer has as a stronger party in employment relationships.

The protection of personal data as fundamental right studied such Ukrainian scientists as V. M. Brizhko, V.A. Luzhetsky, A.V. Pazyuk, A.M. Chernobay, G.I. Chanysheva, R.I. Chanyshev and Russian scientists: S.S. Bogatirenko, A.S. Dolgov, A.M. Lushnikov, N.L. Liutov A.S. Markevich, A.B. Prosvetov, V.I. Sedov, E.A. Stepanov, L.V. Tikhomirov, and also foreign scientists such as W. Berka, C. Grabenwarter, S. Gutwirth, D. Harris, P. De Hert, Y. Poullet, M. Tinnefeld.

The purpose of this article is to analyze approaches to the definition of personal data, the legal regulation of personal data protection. Personal data is defined as any information related to an identified or identifiable employee. An employee is identifiable if by putting together different data contained in one or more files or documents the employee's identity can be determined.

Data protection refers to limits on the processing and use of personal data. This includes data about employees, such as personal health records, and data created or used by employees in emails or internet use.

The purpose of data protection is to protect individuals from the consequences of any form of processing of personal data, particularly computer processing, and thereby to safeguard the right to self-determination over personal data.

In labour law, the employer may lawfully store personal data about employees provided that it is necessary in order to achieve the purpose of the employment relationship. This is generally the case as regards data on the employee's age, training and performance.

International and European institutions are also paying increasing attention to the relationship between information and communication technologies (ICT) and privacy at work, with a number of recommendations and codes drawn up by bodies such as the Council of Europe and the International Labour Organisation – for example, in 1996, the ILO issued a code of practice on the protection of employees' personal data, covering general principles of protection of such data and specific provisions regarding their collection, security, storage, use and communication. There have also been relevant recent cases in the European Court of Human Rights.

T. Loskutov,
Candidate of Law Sciences,
Associate Professor at the Department of Criminal Procedure,
Donetsk Law Institute of the Ministry of Internal Affairs of Ukraine

DOGMATIC AND AXIOLOGICAL APPROACHES TO DEFINITION OF A SUBJECT OF LEGAL REGULATION IN CRIMINAL PROCEEDING

The article analyzes the use of dogmatic and axiological methodological approaches to definition of a subject of legal regulation in criminal proceedings.

The purpose of the article is the scientific result in the form of the characteristics of the use of dogmatic and axiological methodological approaches to definition of a subject of criminal procedure regulation.

For achievement of the specified purpose such tasks were set: 1) to analyze the use of dogmatic approach to definition of a subject of criminal procedure regulation; 2) to analyze use of axiological approach to definition of the specified subject of regulation.

As a result of research it is proved that definition of the subject of legal regulation in criminal proceeding in modern criminal trial can not be sufficiently determined using only dogmatic approach. The criminal procedure legislation written according to the doctrine of the criminal procedural relations (criminal procedural activity) is not always able to satisfy needs of certain participants of criminal legal proceedings. Decisions of the European Court of Human Rights concerning Ukraine confirm it.

It is also stated that at the present stage of development of the procedure theory, axiological approach is used for definition of a subject of regulation, according to which the procedural law has to regulate issues which are valuable for the person.

Use of axiological approach to definition of a subject of legal regulation in criminal proceeding will promote creation of a criminal legal procedure which conforms with the international and European standards of ensuring human rights in criminal trial.

The further directions of scientific development are defined: 1) research of a subject of criminal procedural regulation using comparative methodological approach; 2) research of the specified subject of regulation applying synergetic methodological approach.

I. Lukach,
Candidate of Law Sciences,
Associate Professor at the Department of Economic Law,
Taras Shevchenko National University of Kyiv

LEGAL ASPECTS OF ABSENT VOTING AT GENERAL SHAREHOLDERS MEETING

The article is devoted to the mechanism for absent voting at general shareholders meeting in connection with the adaptation of Ukrainian corporate law to EU directives. The author makes a statement that in the modern world shareholders must be connected by up to date means of communication. Approaches to voting of shareholders in shareholders meeting in different legislative systems are examined and systemized. The article proposes reforms of alternative ways of holding general meetings by implementation of mechanism of absent voting. The author concludes that the draft bill of changes into shareholders meetings in absence which ignores the possibility of voting by electronic means of communication does not comply not only with the EU directives, but also with progressive international experience.

In line with current trends and Ukraine's aspirations for European integration the following mechanisms of changes of Ukrainian legislation were developed: 1. Priority should be given to absent voting by electronic means of communication. 2. Absent voting should also be permitted by the exchange of letters. 3. Priority should be given to holding general meetings in real time, but in limited liability companies and private companies they may be conducted by means of absent voting. 4. Absent voting (without holding a general meeting including an annual one) shall not be held on the matters requiring a qualified majority, as well as the exclusion of a member of a limited liability company. 5. Necessary amendments in Ukraine should be developed in collaboration with experts in law, economics and software.

V. Lutsyk,
Candidate of Law Sciences,
Associate Professor at the Department of Criminal Procedure and Criminalistics,
Ivan Franko National University of Lviv

ARREST OF CORRESPONDENCE AS UNDERCOVER INVESTIGATIVE (DETECTIVE) ACTION

The paper gives the thesis that arrest of correspondence means prohibition to post offices and financial institutions to handle correspondence to the addressee without relevant instruction of investigator, prosecutor.

The author argues the fact that arrest can be imposed on the correspondence, addressed to specific person or sent by that person because this undercover investigative (detective) action is fixed in Art. 2 chapter 21 of the Criminal Procedural Code of Ukraine "Interference in private communication," according to which arrest cannot be imposed on correspondence, sent from or to specific address without statement of a specific person, to whom it is addressed.

It is shown that the reason for arrest of correspondence is a sufficient basis to consider that postal and telegraphic correspondence of a specific person to other person or from other persons to him, can contain information on circumstances or objects and documents which are of essential value for pretrial investigation.

The aim of arrest is to receive information which is fixed in postal correspondence or telegrams about criminal activity of a person, his illegal relations, location of the wanted person, disclosure of objects and substances, turnover of which is prohibited.

Review and seizure of correspondence means undercover opening and examination of detained correspondence, which is under arrest, its seizure or copying, or samples getting, marking of revealed objects and documents with specific notes, equipping them with technical control instruments, change of objects and substances, which are dangerous for surrounding or prohibited for free circulation, for their harmless analogs.

Also, the author provides the necessary recommendations that in the case of arrest of correspondence which is delivered by private postal services to investigator or prosecutor, it is reasonable to pass a decision on nonclassification of protocols of undercover investigative (detective) action and to notify participants of this undercover investigative action about criminal responsibility for disclosure of pretrial investigation data.

E. Manivlets,
PhD, assistant professor of criminal procedure,
Donetsk Law Institute of MIA of Ukraine

FACTORS THAT AFFECT THE FORMATION OF CRIMINAL PROCEDURAL LAW

The system of criminal procedural law, on the one hand, integral and independent system, and the other – an integral element of a higher level, which is the legal system.

The desire to find a factor which is particularly noticeable in recent years because of legal science need serious help in creating a legal system that meets the legal state. As emphasized PK Anokhin mandatory provisions for all kinds of directions and systematic approach is to find and formulate a factor.

The system of criminal procedural law under the simultaneous action of both external and domestic systemically important factors that complement each other, ensure the development of the criminal procedural law, preserving its integrity, structure and form. Effects of external factor which contributes to the formation of the outer shell of the criminal procedural law and filling its relevant elements. As for the internal factors, their task is to provide a reliable association and interaction of elements of the system, limited outer shell of the criminal procedural law.

M. Kikalishvili,
Candidate of Law Sciences,
Associate Professor at the Department of Criminal Law,
Taras Shevchenko National University of Kyiv

N. Ulianova,
Student,
Law Faculty,
Taras Shevchenko National University of Kyiv

SYSTEM OF TAXATION AS A SUBJECT MATTER OF CRIMINAL PROTECTION WITHIN ARTICLE 212 OF CRIMINAL CODE OF UKRAINE

The article deals with the analysis of system of taxation characteristics as a subject matter of criminal protection within Article 212 of Criminal Code of Ukraine. It examines the correlation of the following notions "the system of taxation" and "fiscal system." It also defines the system of taxation of Ukraine as a range of such interconnected components which are stipulated in current legal system: taxes and levies; the way they are defined, their abolition and payment to budgets; rights and liabilities of participants of tax relations; the procedure for exercising of tax control and the way of holding liable for violation of tax legislation requirements.

The article points out that tax legislation is supposed to be clear, stable and understandable for tax payers. Criminal responsibility for taxes and levies evasion (mandatory payments) in accordance with Article 212 of Criminal Code first of all performs a warning function for participants of tax relations and this way it protects the system of taxation and stimulates law-abiding behavior of tax-payers. In case of committing tax crime, the protective mission of the criminal law lies in conducting criminal classification of the committed crime based on the provisions of it as well as applying legal actions towards those found responsible.

The article also emphasizes that the most outrageous misdeeds within the system of taxation are supposed to be stipulated in Criminal Code of Ukraine as offences and lead to criminal responsibility. In connection with aforementioned facts designing precise and flawless provisions of Criminal Code of Ukraine is a key element in criminal protection.

UKRAINE AND THE WORLD

A. Ahanina,
graduate student of Administrative and Economic Law,
Zaporizhzhya National University

SYSTEM OF SPECIAL PRINCIPLES ADAPTATION OF NATIONAL LEGISLATION ON TRAINING CIVIL SERVANTS TO EU STANDARDS

In the context of intensified law-making processes in Ukraine aimed at harmonizing national legal system with European, adaptation (as part of the harmonization) of national legislation to EU law, acquires relevance of scientific study certain aspects of these phenomena. In particular, the center of scientific research there are issues dedicated to the principles of adaptation of national legislation to EU standards, in particular its fundamental principles as guiding ideas and adapting the regulatory framework of Ukraine to European standards. It's no secret that one of the main objects of adaptation is the law that defines the legal status and the system of public administration, information law (in the plane of providing access to some of civil society and the specific individual to public information), the law on civil service as a mechanism for administration and so on.

For example, in the Concept of adaptation of public service in Ukraine to EU standards (approved by the Decree of the President of Ukraine on March 5, 2004 № 278/2004), stipulates that in view of the strategic goal Ukraine to implement complex transformations and create real (domestic) conditions for joining the European Union, approaching the civil service to its accepted principles for EU Member States is particularly relevant.

In turn, so to speak, the primary element of public service as a specific institutional mechanism is particularly ordinary civil servant. It is on professionalism, integrity and level of training of personnel Civil Service depends on efficiency of state functions in general. Weighty value in this area certainly plays legislation on training, retraining and training of civil servants, which today requires a thorough and meticulous study is in the design principles of adaptation of legislation to EU norms.

T. Anakina,
PhD, Associated Professor at the International Law Department,
Yaroslav Mudryi National Law University

D. Honcharenko,
LLM in International Business Law,
Central European University

ANALYSIS OF LEGAL APPROACHES TO HOSTILE CORPORATE TAKEOVER IN THE EU WITH AN EMPHASIS ON GERMANY

The article is dedicated to the analysis of legal approaches to the hostile corporate takeovers in the EU and Germany laws. The paper studies such innovative provisions of the Directive 2004/25/EC of the European Parliament and of the Council of 21.04.2004 on takeover bids, as the board neutrality rule, the breakthrough rule and the mandatory bid rule and its implication in modern German law on takeover activities. The particular attention is drawn to the provisions of Article 2 – Definitions, Article 4 – Supervisory authority and applicable law, Article 5 – Protection of minority shareholders, the mandatory bid and the equitable price, Article 9 – Obligations of the board of the offeree company, Article 11 – Breakthrough rule and Article 15 – The right of squeeze-out of the Directive, and reflection of this regulations provided by these articles in the provisions on hostile takeovers in the Act on the Acquisition of Securities and Takeovers in Germany 2002.

Also, the paper studies German regulations of the corporate hostile takeover activities in comparison with the corporate hostile takeover practices developed by the United States legal system and common law. Such comparative analyses of the takeover regulations are especially important for the development of the Ukrainian takeover regulations. It is relevant in the light of a recently partly signed Association Agreement between the EU and Ukraine obliging to adapt its legal system to the EU standards.

O. Stakheyeva-Bohovyk,
Degree Seeking Applicant,
Department of International Corporate Law,
Institute of International Relations,
Taras Shevchenko National University of Kyiv

APPROXIMATION OF THE LAW OF UKRAINE IN THE SPHERE OF CROSS-BORDER INSOLVENCY TO THE EU STANDARDS

This paper gives an insight to the issue of approximation of the law of Ukraine in the sphere of cross-border insolvency to the EU standards. It demonstrates that the European law has effective mechanisms to resolve cross-border insolvency cases. Ukraine, in its turn, has only recently introduced such mechanisms. Moreover, the latter seem to be wrongly implemented to the legislation of Ukraine which impedes effective resolution of cross-border insolvency cases. In this connection the paper provides the analysis of the EU Regulation 1346/2000 On Insolvency Proceedings and the proposals to change it to define better solution and effective rules to operate on the legislation of Ukraine.

The main emphasis is made to the jurisdictional matter, i.e. what concepts should prevail when deciding what court has jurisdiction to commence either main or non-main insolvency proceedings. This paper proved that the key concept to determining the jurisdiction to open a main insolvency proceeding should be "debtor's centre of main interests" (COMI), and "establishment" should be the correct concept to entitle a court of a relevant state to commence a non-main (secondary, territorial) insolvency proceeding. The author demonstrates that these concepts are to have an autonomous meaning, without a need to search for equivalents in the home legislation of a particular state. Another important issue to pay attention in order to approximate the law of Ukraine to the EU standards is comity. It is proposed to exclude the requirement to have an international treaty to be able to recognize and enforce foreign judgments (acts) in the sphere of cross-border insolvency. It is suggested to introduce a presumption of comity to facilitate effective recognition and enforcement in the territory of another state, etc.

LINK OF TIMES: CHAPTERS OF HISTORY

V. Borysenko
graduate student of legal support
economic activity
Kharkiv National University of Internal Affairs

HISTORICAL AND LEGAL ANALYSIS OF FORMATION OF LOCAL TAXATION IN UKRAINE

The current tax system today is the result of a long historical process of development and improvement of methods, forms and mechanisms of taxation. Part of the tax system of the state are local taxes and fees. Various forms of local taxation in the Ukrainian lands appeared much later state taxes and fees. Thus, the local tax has become part of the existing system and became its main features that were formed during the birth and formation of the state and the transition from subsistence to cash.

The power to of law formation of local taxation, which are set by law, affect the ability of local governments to regulate and manage public affairs under their own responsibility and in the interests of local people.

So, based on our analysis we can conclude that the main features of local taxes and fees, which distinguish them from state taxes and fees are the following features:

1) the right of local councils to set local taxes and fees (within the powers defined by the Tax Code of Ukraine);

2) mandatory local taxes and fees in the territory of local communities;

3) local taxes and charges payable to relevant local budgets and skladayut the bulk of their income.

Local taxes and fees are part of local budgets, but they can not be separated from the general government finances. Introduction and procedure for collecting local taxes and fees are regulated by the state. Given the fact that some economic and social issues of the population appropriately addressed at the local level, the introduction of local taxes and fees is an effective mechanism for public financial policy.

Local taxes and fees, implementation of which is conditioned by political, economic and social conditions, can be considered as a tool of public administration and local financial resources as one of the guarantees of local government.

D. Zabzaliuk,
Candidate of Historical Sciences, Associate Professor,
Professor at the Department of Theory and History of the State and Law,
Lviv State University of Internal Affairs

ON ISSUES OF LEGAL RELATIONSHIPS OF DANYLO HALYTSKY WITH CRUSADERS IN THE MIDDLE OF XIII OF CENTURY

This article is dedicated to the analysis of features of legal relations of the ruler of Kingdom of Galicia-Volhynia knyaz Danylo Romanovich with crusaders in 30-50th years of XIII century. In the article the main features of state and political development of the Galicia-Volhynia in the period of reign of Danylo Halytsky are investigated. Attention is accented on the character of relationships with Rome in the context of conclusion of church union and organization of crusade of union of the catholic states against a Mongol-Tatar invasion. Additional attention is paid to the relationships with crusaders represented by spiritual knightly orders in the aspect of military collaboration.

An idea of the article is that the period of reign of Danylo Halytsky is characterized by the clear European vector of foreign policy, and also by the attempt of the Galicia-Volhynia to enter the European association of the catholic states.

It should be noted that researches of the Kingdom of Galicia-Volhynia are mainly of historical character, and the problems of legal value were and are observed not too often.

T. Kurylo,
Candidate of Law Sciences, Associate Professor,
Professor at the Department of Civil Law and Procedure,
Lviv State University of Internal Affairs

H. Lipak,
Postgraduate Student,
Department of Theory and History of State and Law,
Lviv State University of Internal Affairs

THE CONCEPT OF MARRIAGE AND THE MANNER OF ITS ESTABLISHMENT ON THE TERRITORY OF UKRAINE WITHIN THE RUSSIAN EMPIRE (XIX – EARLY XX CENTURY)

Nowadays development of the Ukrainian family undergoes many new changes which are unusual for the mentality of our nation. Firstly, such transformation is connected with the globalization of the society, depreciation of the initial purpose of the family foundation, which was set by our ancestors, that is the respect of the married couple to each other, the respect between parents and their children, preservation of Ukrainian family values. In order to avoid the excess of the democratization of the family life and the bad consequences that can happen on this basis, modern scientists and legislators have to refer to historical sources. Those are good for taking the basic rules of improving family relationships and the Ukrainian family legislation in particular. Historical analysis gives an opportunity to state the fact of originality and unicity of the family law in Ukraine and considering the past mistakes to carry up future possibilities.

The Laws of the Russian Empire were enacted on the territory of Ukraine, which was under Russia guidance in 1840-1842.

The first book regulating family rights and duties consisted of three parts, the first one was called "About the marriage." According to this part there existed only religious kind of marriage. The registration of marriages was held only in churches. The Marriage Law of the Russian Empire did not provide the existence of social institutions where marriages could be registered without the church. Thus, the state with the help of the church was trying to exert control over marriage legal relationships. The marriage was preceded by a series of procedures that the couples and a priest, who crowned them, had to do. Marriage rules of the Laws of the Russian Empire in 1832 did not involve the engagement and the wedding which were an obligatory part of a marriage process according to the Ukrainian customs.

M. Lutskyy,
Candidate of Law Sciences, Associate Professor,
Professor at the Department of Theory and History of State and Law,
King Danyl of Halicia Ivano-Frankivsk University of Law

SOLUTION TO THE AGRICULTURAL PROBLEM UNDER THE LEGISLATIONS OF THE WEST UKRAINIAN PEOPLE'S REPUBLIC (ZUNR) AND THE UKRAINIAN NATIONAL REPUBLIC (UNR): COMPARATIVE ASPECT

The issue of land legislation of ZUNR and UNR is revealed in the article. Special legal acts which were adopted by the ZUNR and UNR legislative bodies and under which the agricultural reform was carried out on the Ukrainian territory are researched in the comparative aspect.

The Third Universal and the provisions regulating land issues in UNR are analyzed. Legislative settlement of the abolishment of the rights to the landlords' property and other lands and the right of the UNR citizens to the land are defined. In this aspect the official interpretation proclaimed by the General Secretariat on 16th of November, 1917 was explained and it was found out that abolishment of the property rights should be considered as prohibition to alienate land by former owners; the property rights were terminated without redemption; the rules of giving land into exploitation were established.

The research revealed the ways of solution to land problems under the legal act adopted by the Central Council of Ukraine on 18th of January, 1918 and highlighted that under the law all the lands including waters, above-ground and underground resources on the territory of UNR are owned by its citizens who have the right to exploit them irrespectively of their sex, religion and nationality.

Provisions of the Law on land approved by the UNR Directory on 8th of January, 1919 are reviewed in the work. The changes into regulation of land relations introduced by the Law are defined as the following: determination of the minimum land size which is received and specification of the maximum land size which remains with the former owners etc.

Special emphasis is made upon the conditions of the land reform introduction on the territory of ZUNR which featured the legalization of private ownership of land. The research analyzed the Law on land reform approved by the Ukrainian National Council on 14th of April, 1919 supporting deprivation of landlords', monastery and church lands and the lands of other rich landowners and their registration in the "state land fund" for the villagers with little or no lands and the disabled military men.

The research of the Land law provisions of ZUNR published on 8th of May, 1919 enabled the villagers with little or no lands to receive land into private property; punishment was provided for those who broke the land legislation rules.

The analysis of ZUNR and UNR legislation revealed similarities and differences between the processes of land reform introduction and their practical application by the UNR and ZUNR governments as well as showed the reasons for the failure of application of the specialized legal acts.

Yu. Khizhniak,
graduate student of theory of law of the National University "Odessa Law Academy"

PONTIUS PILATE SENTENCE AS A DEMONSTRATION JUDICIAL TYRANNY (THE NOVEL BY MIKHAIL BULGAKOV "THE MASTER AND MARGARITA")

The court of Pontius Pilate is described Mikhail Bulgakov in the so-called ancient chapters of the novel "The Master and Margarita." The Ukrainian legal literature, there are no works devoted to the study of creativity Bulgakov for the presence in it of ideas about law and the state.

The goal of this study is to analyze from the point of view of modern general theoretical legal process of the court of Pontius Pilate, on the basis of how he dealt with in his novel Bulgakov.

As the chapters of the novel Yershalaim rich intertextual biblical inclusions, which are presented in the form of quotations, allusions that refer to symbols, images, stories and situations from the Bible, it must be emphasized that the description of events in the texts of the Gospels, and the novel is not the same. These discrepancies, certainly deserve a separate study. And it may seem that in order to avoid confusion, it is more expedient to rely solely on the text of the novel. However, ignoring the writer of some episodes from the Bible, or vice versa, the addition of some new, can help shed light on the opinion of Mikhail Bulgakov on various legal issues and public life. That is why the absolute absence of references to the text of Scripture is not possible.

TRIBUNE OF DOCTORAL CANDIDATE

O. Fedotov,
PhD, associate professor, assistant professor of maritime and customs law, a doctoral student of National University "Odessa Law Academy"

STATE FISCAL SERVICE: LEGAL GROUNDS OF CREATION

Implementation of state customs – a process to implement the public authorities tasks entrusted to them for the purpose, according to the legislation of Ukraine on Civil customs.

However, a combination of regulated permanent law of Ukraine on Civil customs tasks to carry out and perform these bodies and also own the very legal status of these bodies is lately more and more questions. The establishment of modern central government fiscal policy office of Ukraine Ministry of revenue through reorganization, has brought an end to independent existence under the Central State Customs Service of Ukraine (or in old-style former State Customs Committee of Ukraine, the former Customs Service of Ukraine, or in some new format). The decision of the Ukrainian Government is more visionary. However, it is extremely necessary to distance themselves from both revisionism, the return of history in reverse direction in matters of undeniable recovery of already eliminated Mindohodiv, so also on dvohznachnoyi casuistry in the context of interpretation of the law of Ukraine on Civil customs and harassment by members of different political colors to leaders of the newly established central government fiscal departments of Ukraine and its territorial administrations, including customs and their departments – customs posts.

O. Basai,
Candidate of Law Sciences,
Department of Intellectual Property and Corporate Law,
National University "Odessa Law Academy"

COMPULSORY LICENSING IN THE PHARMACEUTICAL INDUSTRY

The article considers the issuance of a basic compulsory license in the pharmaceutical industry. The author analyzes the provisions of the TRIPS Agreement, the Doha Declaration, which define the use of patented invention, utility model to address the public authority without the consent of the patent owner. The article considers the practice and conditions of compulsory licensing in foreign countries.

Compulsory licensing may only be permitted if, prior to such use, the user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a member in the case of a national emergency or other circumstance of extreme urgency or in cases of public non-commercial use.

The permission to use the patented invention for the manufacture of drugs is issued by the Cabinet of Ministers of Ukraine. The permit is issued under the following conditions: the patent owner cannot meet the demand for the drug in those conditions that are commonly used to produce the drug; patent owner without good reason refuses to issue the applicant a license to use the invention, utility model.

Compulsory licensing in the pharmaceutical industry is applied to provide patients with inexpensive drugs of the required quantity. Often compulsory licenses are issued for the manufacture to import a medicament for the treatment of AIDS, tuberculosis and malaria. Compulsory licensing can significantly reduce the cost of treatment.

TRIBUNE OF YOUNG SCIENTIST

T. Filipova,
Judge,
Rivne Economic Court of Appeal

GENESIS OF ADMINISTRATIVE PROCEDURES IN THE FIELD OF PROTECTION OF ECONOMIC COMPETITION IN UKRAINE

The article aims at analyzing genesis and its stages of normative fixation and research in administrative legal doctrine of administrative procedures in the field of protection of economic competition. The analysis led to the conclusion that normative fixation of such administrative procedures in the national legislation is characterized by a short-term, stage-like and blur-like nature of its contents.

The author has defined three stages of researches considering genesis of administrative procedures in the field of protection of economic competition in the national administrative legal science: 1st stage (before 1917); 2nd stage (1917-1991); 3rd stage (1991-till now). The analysis of the contents of the stages indicates that scientists are interested in the issues of administrative legal regulation of anti-monopolistic bodies. There is a tendency to make researches considering regulation of the administrative procedures and absence of complex and system scientific researches of administrative procedures in the field of protection of economic competition in Ukraine.

It is worth mentioning that the basic tendency for research of administrative legal regulation in the mentioned field is the narrowing of the object of the scientific research from the global issues of the administrative legal regulation in the field of monopoly and competition to the specific research – administrative legal regulation (certain aspects) of the definite procedures in the field of protection of economic competition.

The author mentions that the tendency of normative fixation of the administrative procedures in the field of protection of economic competition is the detailing of administrative legal definition of monopolistic (dominant) state of a subject, control over the economic concentration and coordination of actions among all the entities, examination of the case by the Anti-Monopoly Committee of Ukraine, executing and appealing – from fragmental contents of administrative-legal norms in the blurred legislation of Ukraine to its systematization in specific regulatory acts regarding certain kinds of such administrative procedures.

I. Dymon,
Postgraduate Student,
Department of Administrative and Financial Law,
National University "Odessa Law Academy"

ADMINISTRATIVE SUSPENSION AS THE ADMINISTRATIVE ENFORCEMENT MEASURE: NATURE, VALUE AND TYPES

The real offenses are threat for the protected public relations. Thus, it is necessary to immediately apply all important and needful measures for their protection and stopping of legal requirements violations. The most numerous among administrative enforcement measures is administrative suppression. There is not any definition and clear classification of administrative suspension measures neither in the current legislation nor in the special literature. At the same time it is necessary to point out that most of scientists agree with the classification proposed by M. Eropkin: 1) measures of administrative prevention; 2) measures of administrative suspension; 3) measures of administrative responsibility.

The measures of administrative suspension are usually used for involuntary termination of unlawful acts that have signs of administrative offenses and, in some cases, crimes. Also, these measures are important for prevention of harmful consequences of violations or crimes. They are also necessary to ensure the application of the administrative penalties and in some cases, of criminal penalties to the offender.

The use of administrative suspension can quickly and directly solve the conflict situation by means of forced termination of the unlawful invasion. Also, it is important to note that, unlike preventive measures, measures of administrative suspension have more legal regulation.

It should be emphasized that the special measures of administrative suspension are the last resort used by the competent authorities (officials), if necessary, for termination of offenses (crimes), when other means are ineffective.

Thus, we can make the conclusion that administrative suspension is involuntary termination of acts that have signs of the administrative offense (and in some cases – the criminal offence) aimed at preventing the harmful effects of wrongful acts and bringing offenders to administrative and sometimes to criminal responsibility.

O. Ahakerimov,
Postgraduate Student,
Department of Criminal Procedure,
National University "Odessa Law Academy"

HOME DETENTION AS A PREVENTIVE MEASURE: BACKGROUND AND CONTEMPORANEITY

The problem of law anв order occupies a leading position in any social state as without law and order the usual, harmonious development of the society and state becomes essentially complicated. In addition, at the low level of law and order the level of crime situation increases that is unacceptable in a country where a person, his (her) life and health are recognized as the highest social value, individual's rights, freedoms and their guarantees determine the essence and orientation of the state activity.

The objectives of the research are as follows:

a) to cover the history of home detention as a preventive measure, because through history a particular implementation in the area of public relations, depending on their positive or negative experiences, is either approved and hence is worth of further use, or, in the case of negative experiences, needs to be replaced;

b) to cover a number of arguments in favor of existence of home detention in a system of preventive measures, as well as some of the problems specific to it and introducing proposals to eliminate them.

It should be noted that currently many countries of the world provide the use of home detention as a preventive measure in their criminal and procedural law. For example, it is used in Azerbaijan, Belarus, Kazakhstan, Latvia, Lithuania, Moldova, Germany, Russia, Sweden and so on.

Home detention fulfils a function of a preventive measure, which combines the features of a strict (in case of twenty-four-hour home detention) restraint of a person it is applied to, without the use of a preventive measure in the form of detention.

The relevance of the existence of house arrest in contemporary Ukraine is stipulated by a number of problems solved during its application.

V. Bazhanova,
Postgraduate Student,
Department of Civil Law,
Taras Shevchenko National University of Kyiv

THE PROPERTY OF PRIVATE COMPANY AS THE JOINT PROPERTY OF SPOUSES IN THE CIVIL LAW OF UKRAINE

The publication is devoted to the research of property rights of spouses. The property relationships between wife and husband are described in this article.

The purpose of this research is to analyze the certain types of objects of joint property of spouses.

The object of this research is family relationships between wife and husband in the civil law of Ukraine.

The subject of this research are: international acts, legal acts of Ukraine and foreign countries and their practical application, scientific views, ideas and concepts of domestic and foreign scholars in the field of property relationships between spouses.

Methodological basis of the research consists of the following methods: legal comparative method; dialectical method; formal and logical methods; systemic and structural methods etc.

It should be noted, that issues of ownership of spouses are extremely important under present conditions.

By the general rule, marriage is the basis for the emergence of joint ownership property of spouses. However, irrespective of the marriage, each spouse may have a property which belongs to him personally.

Problems of determining the property as joint property of the spouses are analyzed in this article.

Certain types of property, which is wife's and husband's personal private property, are studied in this article.

The possibility of determination of private company property and individual entrepreneurs' property as joint property of spouses is analyzed.

K. Biletska,
Postgraduate Student,
Department of Criminal Process,
National Academy of Internal Affairs

PERSONAL GUARANTEE AS THE RESTRICTION OF THE RIGHT TO FREEDOM OF MAN AND OF THE CITIZEN: PHILOSOPHICAL ASPECT

The paper sets the problem of understanding of the concept of "freedom" and its relation to responsibility for the criminal offense. The author argues that concept of "freedom" is very broad and is being explored for ages, but the final conclusion on freedom and the conditions under which it should be limited does not exist. It is shown that people care about the problem of the right to freedom from ancient times, including its limitations. Author of the article says that freedom is the result of human free will expression, but responsibilities and freedom are separated concepts, because responsibility is a price of freedom.

Law developed with the development of society. Thus, nowadays all freedoms of man are consolidated in legal acts. If somebody breaks the law he will have to suffer from the punishment. Personal guarantee is one of the preventive measures in criminal proceedings, which restricts the rights and freedoms of human. However, it is a necessary measure for honest, complete and objective investigation. Personal guarantee becomes more popular with the new Criminal Procedure Code of Ukraine. Despite the fact that personal guarantee has passed a long way of development, it has not changed substantially and still remains an instrument which organizes liberty of the suspect and ensures his appearance to the investigating authorities.

The author describes in her article that there are many disadvantages and gaps in current legislation. That is why she provides the necessary recommendations to improve national legislation in regard to personal guarantee.

Y. Bunin,
Degree Seeking Applicant,
Department of Criminal Law № 1,
Yaroslav Mudryi National Law University

ON THE OBJECT OF CRIMES AGAINST JUSTICE

This article is devoted to the study of the definition of object of a crime against justice. The author notes that the establishment of object of a crime is a prerequisite to the correct application of the criminal law, qualification of a crime committed by a person, its separation from other related socially dangerous acts. However, on the basis of our research, we prove that the criminal law literature expresses different views on understanding of the object of crime against justice. The author concluded that the vast majority of scientists, who have studied this issue, note that the legislator, creating norms of legal protection of justice, does not regard to procedural meaning of the term, but reads broader meaning into the latest, considering the necessary to protect any kind of activities aimed at achieving the objectives of justice: whether the work of the court, prosecutor, pretrial investigation or penal authorities etc. That is why many scientists under the object of crimes against justice understand the relations connected with legal administration of justice by the courts, maintaining that activity by the authorities of criminal investigation, prosecution, defence, and by the people and institutions that enforce the judicial decision. However, the article states that in the scientific literature there is a position on a narrow understanding of the object of the crimes against justice, namely the proper administration of justice by the court. In addition, the article analyzes different approaches to understanding the object of a crime against justice as well as changes of the title of section XVIII of the Special Part of the Criminal Code of Ukraine. Based on the results of research, the author came to the conclusion that the object of crimes against justice are public relations on the administration of justice, namely the relations arising in the jurisdictional or law enforcement activities, the activities of the court considering hearings of cases (proceedings) determined by law, activity of specially created state bodies that contribute to the administration of justice.

D. Volkova,
Assistant Lecturer,
Department of Constitutional Law,
National University "Odessa Law Academy"

CREATION AND FUNCTIONING OF CIVIL SOCIETY ORGANIZATIONS IN USSR: CONSTITUTIONAL PROBLEMS

This article covers the fundamental works of Soviet scientists of the second half of the XX century considering the constitutional and legal problems of the establishment and functioning of civil society organizations. During the Soviet times civil society organizations were considered to be voluntary (but actually they were not), free of state influence (but actually they were not as well) and had other minor features that contemporary Ukrainian civil society organizations do not have.

Regardless of that thesis, it is concluded that the most efficient now is to use the books of the main Soviet civil society organizations' researchers – the books of Z.A. Yampolskaya, A.I. Schihlyk, V.V. Kravchenko, H.A. Kudryavtseva, O.V. Orlova, D.V. Shutko, N.I. Danchenko. These books highlight the problems of civil society organizations which have not lost their relevance now. Author notes that many works are devoted to the interaction between civil society organizations and public authorities.

Author suggests dividing these books into 2 groups. The publications of the first group are too ideological, and do not present a significant interest in solving modern problems of civil society organizations in Ukraine. The publications of the second group are about the transfer of certain powers of public authorities to civil society organizations. They are of considerable interest for further development of Ukrainian civil society (books of M.T. Baymahanov, D.V. Shutko, V.M. Horshenyov etc.).

Also author recommends relevant and useful books naming their titles and chapters of these books.

A. Hryhorieva,
Degree Seeking Applicant,
Department of Private Law Issues,
F.H. Burchak Scientific and Research Institute of Private Law and Business
at the National Academy of Legal Sciences of Ukraine

CONDITIONS OF THE DETERMINATION OF THE FACT OF COMMON-LAW MARRIAGE IN COURT HEARING AND EVIDENCES TO PROVE IT

The article is devoted to the determination of the conditions of common-law marriage and the range of evidence, which often confirm this fact in court hearings. The author has analyzed Ukrainian legal acts and judicial practice and on this basis identified signs of common-law marriage, which is to be proved in court and is reflected in the relevant evidences. The author argues that Ukrainian legislation does not have clearly identifiable signs of common-law marriage, which can also cause some difficulties in the process of confirming this fact in court.

The author comes to the conclusion that the fact of being in a common-law marriage can be proved by any admissible evidences. The law does not define and does not restrict their list. According to the analysis of court decisions in this type of cases such evidence like testimony of the parties, witnesses and written evidence are often used to confirm the fact of common-law marriage.

S. Hula,
Postgraduate Student,
Department of Constitutional and Administrative Law,
Kyiv University of Law of the National Academy of Sciences of Ukraine

CURRENT STATE OF PUBLIC CONTROL OVER GOVERNMENT PROCUREMENT

This article highlights the issue of implementation of the law on civil society organizations, of their supervisory functions and analyzes the scope of activities of civil society organizations in the field of government procurement on the basis of analysis of current practice, research, and applicable law.

One of the urgent tasks of public institutions is the transformation of public control over the activities of the government and the transformation of the current system of control at all. Government procurement in Ukraine, as in many other countries, is extremely important, because it is aimed to further meet the needs of many state and local governments. Thus, there is a real need for the organization and implementation of public control over this area in order to increase the efficiency of government procurement.

It should be noted that the activities of civil society organizations in this direction could be much more effective if there was provided detailed legislative process of public control of government procurement using specific rights and responsibilities of civil society organizations in the implementation of their functions in relation to stop abuses considering the procurement.

Also the author provides necessary recommendations to improve legal regulation in the sphere of the governmental procurement and his thoughts about real mechanisms of supervisory functions over the activities of civil society organizations which will have good influence on all economic system and provide development of civil society of Ukraine.

L. Davyd,
Degree Seeking Applicant,
Science and Research Institute of Intellectual Property,
National Academy of Legal Sciences of Ukraine

LEGAL CONTENT AND FUNCTIONS OF INDUSTRIAL DESIGN AS AN OBJECTS OF INDUSTRIAL PROPERTY

In this paper the author discusses the problems of legal content and features of industrial design. The author analyzes the contents of relations associated with the implementation of intellectual property rights on industrial design. Correlation of industrial design with other objects of industrial property is identified. The basic functions of industrial design in the modern economy are defined.

The purpose of this paper is to determine the role of the industrial design in the system of intellectual property rights in the light of its content and features. This goal is realized through such tasks: to define civil content of the concept of "industrial design" and its legal characteristics; to explore the features of the industrial designas an object of industrial property in the modern market economy; to establish the place of the industrial design in the system of industrial property.

Industrial design differs from the other objects of industrial property by its trade name (means of individualization of participants of civil commerce, goods and services), especially with the trademark, in particular, three-dimensional one. Despite some similarities (as industrial design can individualize goods of certain manufacturer), it should be noted that the patented industrial design can be used only in direct relation to the goods, element of art and design of which it is. At the same time, the trademark can be applied to any products and services referred to in the certificate of the trademark, or to the decision on the recognition of trademarks.

Industrial design, as well as means of individualization, has a certain identity role, but, unlike identity role of the trademark, it is strongly connected with the essence and functional purpose of the product. At the same time, it should be noted that the design solution, which is an essential element of the product and is determined by its functional purpose, can not be an industrial design even in spite of its novelty, because under this condition, it is a new technical solution and may, with the presence of other features, get legal protection as an invention or utility model.

M. Domanska,
Postgraduate Student,
Department of Justice,
Taras Shevchenko National University of Kyiv

THEORETICAL AND PRACTICAL PROBLEMS OF IDENTIFYING THE PERSONS INVOLVED IN CASES OF CHANGING OF CIVIL CAPACITY OF AN INDIVIDUAL

The article analyzes the legal provisions and investigates the theoretical views on the determining the circle of persons involved in cases of diminished capacity of individual and recognizing incapacity by the court. The characteristics of the individual applicant for special proceedings, as well as involving other interested individuals in the cases related to the mentioned category were analyzed. The author notes a legal interest in the result of trial as the main factor for identification of the parties involved in the case. Therefore, to decide on the further proceedings of the claim, the court is obliged to clearly establish the subject of judicial protection, objective point of the stated claims and legal relations between the stated claim and the claimant.

Besides that, the involvement of other individuals in cases of the category was analyzed. The matter of determining the main features of other involved individuals is reviewed. The author concludes that the other person involved in the special proceedings also has a legal interest (personal, state or public) in a result of the case. In the result of the study, the author proves the necessity of consideration of this category of cases for the person against whom the statement is considered, and the prosecutor who gives a conclusion on the legality of incapacitation of an individual or admitting incapacity of individual.

T. Duzinkevych,
Postgraduate Student,
Department of Civil Law
Institute of Law
Vasyl Stefanyk Precarpathian National University

THE PROBLEM OF BRINGING NON-PARTY INTERVENERS IN CIVIL PROCEDURE OF UKRAINE

This article is devoted to the study of the mechanism of bringing non-party interveners in the case. The problem is that courts often involve third party in case without his permission violating the procedure provided by the Civil Procedure Code of Ukraine. Third parties are often specified by the claimant directly in the statement of claim which also is not provided by procedural law.

The author supports the view of inadmissibility of the third party involvement into the case without his permission, but believes that indicating third party directly in the statement of claim can make proceedings quicker and allows a third party to enter the process as early as possible in order to be able to protect his own rights and interests. Therefore, the author suggests introducing into civil procedural law the term "proposed third party."

Also the author suggests simplifying the procedure of bringing the non-party interveners in the case. To do this it is needed to give claimant the right to specify proposed third party in the statement of claim and provide the court with the right to determine proposed third party on its own initiative. That is why it is required to determine procedure for sending to proposed third party copies of statement of claim with applications and decisions. Also it is necessary to consolidate that the proposed third party may acquire the status of a third party only with his agreement based on the court's decision. Moreover, it is suggested to allow proposed third party to declare his participation personally without the need of filing a written statement.

T. Luzan,
Postgraduate Student,
Department of Civil Law and Procedure,
Ivan Franko National University of Lviv

ISSUE IN LAW AS A CRITERION OF DIVISION OF CASES OF CIVIL JURISDICTION

This is well known that rights and freedoms of humans and citizens are protected by the courts. Every person, who considers that his rights, freedoms or interests are violated, challenged or unadmitted may apply to the court for their protection on civil process. This scientific article is devoted to the problems associated with criterions of division of cases of civil jurisdiction. One of them is the criterion of presence or absence of issue in law.

The author analyses different positions related to such a legal problem. The supporters of one position confirm that all personal and property rights of citizens, their occurrence, modification or termination, are always associated with specific circumstances (legal facts). In turn, legal facts always stipulate certain subjective rights. It means that an issue in legal facts causes an issue in law and they cannot be disassociated, as judicial ascertainment of the certain legal fact is not fulfilled as goal itself, but for rights inextricably connected with this fact.

However, the author considers that there is no issue in law in the ex parte proceeding, but an issue in the legal facts is possible. Transformation of the ex parte proceeding in the litigious proceeding is possible only when there is the direct liaison between the ascertainment of legal fact with necessity to resolve the material and legal dispute. Namely, if an applicant submits an application for the ascertainment of legal fact on purpose to resolve the issue in law on the basis of such a court's decision as long as this issue in law cannot be determined without ascertainment of such a legal fact.

Y. Zhukova,
Postgraduate Student,
Interregional Academy of Personnel Management,
Judge of Dnipropetrovsk Regional Administrative Court

THE PRINCIPLE OF PROCEDURAL ECONOMY IN THE SYSTEM OF PRINCIPLES OF ADMINISTRATIVE LEGAL PROCEEDINGS

The problems of determination of concept and meaning of principles of the administrative legal proceedings of Ukraine are investigated in the article. Author exposes features and meaning of principles of the administrative legal proceedings of Ukraine, their features are educed by their comparison with the principles of other judicial proceedings. The system of the principles of procedural economy is characterized. Author analyzes different classifications of principles of administrative legal proceedings in Ukraine. Critical analysis of provisions of existing legislation and legal literature on the issues of administrative legal proceedings was carried out. In the article the author investigates the range of problems of legal confirmation and realization of the principle of procedural economy in the system of administrative legal proceedings in Ukraine. The author examines the issue of common theoretical and practical significance; carries out an in-deep analysis of the situation of legal regulation and the practice of the realization of the principle of procedural economy in administrative legal proceedings in Ukraine.

In the article the place of principle of procedural economy in the system of principles of administrative judicial process is determined. The issue of interaction of the principle of procedural economy with other principles of the administrative legal proceedings is examined. Necessity of confirmation of principle of procedural economy of the administrative legal proceeding in a current administrative procedural legislation is justified and suggested. The article is devoted to the role and importance of the principle of procedural economy in administrative legal proceedings in Ukraine. The article reveals author's understanding of the role and importance of the abovementioned principle in the development of administrative legal proceedings in Ukraine. In the article the directions of improvement of economic procedural legislation are justified.

L. Zinyak,
Degree Seeking Applicant,
Department of International Law,
Yaroslav Mudryi National Law University

LEGAL REGULATION OF INTERNATIONAL COOPERATION OF THE STATES IN MILITARY SPHERE (GENERAL HISTORICAL REVIEW)

The general historical review of the international cooperation of the states in military sphere is proposed in the article. The author provides investigation of the legal basis of collaboration from Ancient times, Middle times, Westphalia, Vienna, Versailles system of International Law, International Law of the "cold war" period till the modern stage.

It is pointed out that cooperation between the states in military sphere started at the Ancient times and had mainly local character. It was one of the first forms of external activity of the states. It was preconditioned with common interest in setting and keeping external relations for piece coexistence and getting guaranties of mutual attacks prevention, necessity to unite against common enemies through the creation of defense unions as well as aiming at wealth which could be possible through common military attacks.

In Middle Ages and in modern times there were a lot of attempts to create a system of international relations which protected peaceful functioning of the states (especially on Westphalia and Vienna piece conferences) with military resources. However, they failed foremost because the most influential states had no will to limit their military power under the International Law norms. Some positive changes in cooperation of the states were proposed with the Statute of the League of Nations. There were a lot of norms of military cooperation. One of the most significant dealt with the limitation of armaments. But this was not enough for peacekeeping.

Only terrifying consequences of the World War II enforced to revise the whole model of international relations of the states. It was apparent that the states had to limit themselves to reach the whole peace and security and there was a great need in more effective international guarantee mechanism than previous one. To realize these ideas the United Nations Organization was found in 1945. Since that time the main aim of military cooperation became a protection of piece as the greatest value of international society.

Modern international military cooperation is diversified and realized through the great amount of international organizations (NATO, European Union, League of Arab States, African Union, Collective Security Treaty Organization etc.). At the same time there are a lot of bilateral and multilateral international treaties as a legal basis of military cooperation beyond international organizations in the sphere of peacekeeping operations, disarmament, antiterrorist and antipiracy activity and other operations with military resources.

CRITIQUE AND BIBLIOGRAPHY

O. Kyiyvets,
Doctor of Law, Professor,
Professor of civil and legal disciplines
National Prosecution Academy of Ukraine

REVIEW OF THE MONOGRAPH BY ANTSUPOVOYA TATYANA OLEKSANDRIVNA "PROCEDURAL LAW COUNCIL OF EUROPE: PRINCIPLES, THEORY AND PRACTICE"

Research International procedural law belongs to the latest trends in international law, but the question always processuality international law became the subject of scientific debate since the XIX century. These discussions have not traditionally have led to the development of a single, or even a unified understanding of the essence of the phenomenon. The classic approach can be considered for international law procedural characteristics of the secondary towards international substantive law. However, empirical analysis of the content and features of the construction of international legal norms testifies mostly to their procedural nature and the secondary is substantive rules. Absolute is a need for a scientific concept of international procedural law, especially in the context of a permanent fragmentation of international law.

It depends on the procedural rules of the effectiveness of the material. Not paying proper attention to the development of the first reduces the efficiency of the whole system. In addition, it can be considered quasi international legal nihilism.