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LAW

Theory and History of State and Law

Denis Bass

THE ECONOMIC COMPONENT OF NATIONAL SECURITY

Security issues play a major role in the priorities system of policy of any state as one of the fundamental needs of society. So no wonder that currently most authors define security as a certain characteristic of the system and its main components. The only thing that remains controversial is the number of components and their relationship, namely weight of national security in the overall system. In general, this phenomenon is multifaceted which covers all areas and levels of public and not only public life. In this case, while considering the trends of the modern world even more importance goes to economic component. Thus, speaking about the protection of sovereignty we mean economic potential as well.

The relationship between the national, state and economic security becomes even more urgent, considering the growth of national economies interdependence and new risks caused by this interdependence. So conceptual changes in awareness of the security concept led to search of new approaches to its problems.

National security is based on a set of objective and subjective processes and considered as a complex system in conjunction of such basic functional elements as interests, threats, protection. Actually, the state and the ability traditionally considered the main security criteria. However, the development of society has led to the allocation of economic and information security into independent function of both the state and society. Community development has led to the allocation of economic security into independent function of both the state and society. Eventually obviously, in the XXI century it is not appropriate to talk about economic security only as a part of either a national or state security. And if with some reservations, we can still talk about it as a part of the national security strategy and to public safety national status becomes of fully independent status.

Thus far, economic development is one of the most important indicators of economic security state and economic policy is the next important factor that affects the rate of economic growth and determines the status of foreign economic security. The more stable the economy, the higher is the level of economic security.

The concept of national security permanently evolving according to those values, to those needs that nation has and which it considers at some stage of historical development and important priority. Analysis of research on this issue leads to the conclusion that under the term «economic security» most authors understand such state of security of the national economy and as a nationwide set of measures aimed at constant and stable development of the state economy, including the mechanism of opposition to internal and external threats.

In the traditional sense, economic problems can not directly threaten the national security. And their indirect influence can not be overstated. However, in a globalized world economic or political achievements or failures find its planetary echo in one country, one region or one branch of industry, becoming one of the factors of aggravation of international tension.

Economic security is ensured as a purely economic methods and means of non-economic such as political, military and others, including intelligence and counter-intelligence activities of special services. It should also be noted that security in adjacent areas provided not only inherent methods, but mostly by economic measures, including those involving money and other economic resources. In the end of XX – the XXI century in the works of the leading theorists there was confirmed such a concept as «economic war» which was one of the varieties of modern political practice pressure on major powers of their international opponents.

A concrete example of indicated provision of this thesis is the entire post-Soviet history of Ukraine, which constantly have to reflect economic efforts and since 2014 not only economic aggression.

Nowadays, in terms of weakening economic potential of Ukraine, our state faced the problem of contradiction between the necessity to integrate into the world economy, on the one hand, and providing internal economic integration, the protection of its domestic market, own producers and

national interests on the other. Especially because in the modern world dominant international cooperation, integration of economic activities, economic and social policies emerge even brighter.

Therefore, exactly the creation of the economic security system is the guarantee of the effective functioning of the national economy. An appropriate level of economic security can be achieved by the implementation of a unified state policy, supported by system of coordinated measures, adequate to internal and external threats. Without such a policy it is impossible to get out of the crisis, to stabilize the economic situation, let's say in Ukraine, to create effective mechanisms of social protection.

Therefore, only creation of own economic security system (primarily through the prediction, prevention, detection and minimization of negative impact of existing and possible threats) will give opportunity to avoid the possible devastating results of rapid integration of the national economy, to ensure its competitiveness, to realize its social purpose, to protect domestic commodity producers and effectively cooperate with international financial and economic structures. The main directions of the state policy in the sphere of state and public security in the long term perspective should be to strengthen the role of the state as guarantor of the security of the individual, improving relevant regulation.

Volodymyr Havrylenko

THEORETICAL AND METHODOLOGICAL ASPECTS OF THE DEFINITION AND IMPLEMENTATION OF THE PERSONALITY OF THE STATE

The article investigates the historical, legal and theoretical aspects of the legal definition of state sovereignty as the main features of a modern state. Analyzes legal content rights and obligations of the state as the actual carrier sovereign qualities.

Based on the analysis of the trends predicted further development of the place and role of sovereign states in political and legal integration of the universal and regional international relations.

State sovereignty is rather complicated political and legal structure, fundamental knowledge of the content and features of realization of which requires integrated application of a broad multidisciplinary approach that involves several dimensions investigated concepts – theoretical, methodological, political science, constitutional law and international law, because, first turn plurality aspects inherent in state sovereignty in the broadest sense – philosophical, internal and external; theoretical and practical; classical and unconventional analytical; historical, legal, realistic and promising; general and specific to a particular country, etc.

During the 2014 – 2016 biennium. by armed occupation of the sovereign territory of the Ukrainian state and prevent legitimate public authorities to implement sovereign powers belonging to them in accordance with the current legislation of the conceptual and doctrinal point of view, is arbitrary, and therefore – is false and useless in the legal sense of public alienation, and with it the people's (national) sovereignty of a foreign state-controlled aggression and its illegal militias.

It was established that the fundamental rights of the state as the bearer of external (international) sovereignty contemporary legal doctrine considers the following, the most revealing in the plane of the practical implementation of legal personality, the right to act in the international arena on his behalf; the right to enter into relations with other subjects of international law; the right to participate in the creation of international law; the right to exercise their behavior in accordance with applicable international law; the right to recognition of the state as a subject of international law other subjects of international law; the right to conclude international agreements; the right to form or join international organizations; right to individual and collective self-defense; the right to compensation for damages caused as a result of the international commission of an offense.

It is alleged that during the world history of law finding new progressive forms and methods of implementation of state sovereignty helped real, guaranteed by an effective legal mechanisms for implementation of the idea of «limited government» (in contrast to totalitarian regimes, such as the legal system of the USSR, where the law almost in its entirety in the part of the political and legal relationship entered into conflict with the actual content of relevant legal and extralegal and legal mechanisms for their implementation). It is noted that the external (international) dimension of state sovereignty in its present form conceptually shaped by the peace treaty of Westphalia, and finally was formulated at the universal level of fundamental provisions of the Charter of the United Nations and other basic international legal documents.

Determined that the political and legal category of State responsibility in the science and practice rightly occupies a central place in the scientific and practical definition of the external dimension of the implementation of state sovereignty and fills a real legal meaning of subjective performance of duties in accordance with their obligations both to other states, and so to all the international community, without which the modern world is impossible functionally effective implementation of certain regulations of rights, which objectively belongs to each sovereign state.

Andriy Medvid

ON CONSOLIDATING HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE DRAFTS OF CONSTITUTION OF THE WEST UKRAINIAN PEOPLE'S REPUBLIC

After the First World War and the resulting revolutions in Europe and Russia in 1917 – 1918 the Ukrainian people exercise the right to independence. Formation of two national state – Ukrainian People's Republic and Western Ukrainian People's Republic, subsequently United in a single state. Each one does attempt a constitutional consolidation of the most important public relations. For example, the constitutional draft «The Basis of government of the Galician Republic» in 1918 developed in Western Ukraine, contains a number of important constitutional legal provisions concerning the legal status of the person.

This draft is not very large, but it should be noted the democratic nature of its provisions and their progressiveness. This consolidation of the prohibition of slavery and forced labour, right to education and freedom of religion, as well as the compliance of the aforementioned provisions of the European practice of constitutional regulation of the legal status of the individual.

Following the constitutional drafts of Western Ukraine, first quarter of the twentieth century there are two constitutional drafts developed for Western Ukrainian People's Republic by Stanislav Dnistrianskiy. The first of these drafts is «the Unit of the Galician government» (Draft time basic laws), and the second 1920 «Constitution of the West Ukrainian People's Republic».

Section 1 «General provisions» of the draft constitutional act 1918 of the «Device of the Galician State», among other contains two divisions of «Liberty» (article 3) and «Equality» (article 4). They define the legal status of the person. For example, freedom of faith and science, the freedom of the press, freedom of assembly, right to form society, the prohibition to violate freedom of thought, postal secrecy (article 3).

The constitutional draft by Stanislav Dnistrianskiy 1918 «Device Galician State» provides for narrower recognition given to human rights and fundamental freedoms than the draft of the Constitution 1918 «Foundations of government of the Galician Republic». But it still reflects the principles of equality, universality and inalienability of human rights declared S. Dnistrianskiy. Along with this, the constitutional draft «Device of the Galician State» offers, in a similar manner to the provisions of 1918 the Constitution of the Ukrainian People's Republic, to secure the freedom of movement of a person that meets the requirements of Protocol No. 4 to the Convention for the protection of human rights and fundamental freedoms.

In a later draft by Stanislaw Dnistrianskiy 1920 «The Constitution of the West Ukrainian People's Republic», quite a elaborated on the issues of protection of rights and freedoms. The project is a fairly large document, which contains expansive provisions 130, and content logically organized into three chapters.

As we can see, the draft Constitution regulated almost full scope of rights and freedoms, which were later guaranteed by the Convention for the protection of human rights and fundamental freedoms 1950 and its additional protocols. In particular, he stated: prohibition of slavery and forced labour (§ 6), the right to freedom and personal inviolability (§ 7), the right to a fair trial (§ 26), no punishment without law (§ 8), the right to respect for private and family life (§ 9, § 12), freedom of thought, conscience and religion (§ 18, 20), freedom of expression (§ 18), freedom of Assembly and Association (§ 16), the right to marry (§ 29), the right to an effective remedy (§ 28), the prohibition of discrimination (§14, § 25, § 27), protection of property (§ 24, § 33), the right to education (§ 19), the right to free elections (§ 13, § 44), freedom of movement (§ 10, § 11), prohibition of expulsion of a citizen (§ 11), the procedural safeguards relating to expulsion of aliens (§ 11, § 25), the equality of each spouse (§ 25, § 27, § 29).

A large number of provisions of the draft Constitution 1920 of the West Ukrainian People's Republic on human rights and fundamental freedoms for the first time observed in the Ukrainian constitutionalism. For example, this right of the citizen to settle anywhere in the territory of the state (§ 10), and his right to freedom of movement (§ 11), the provision on the possibility to expel aliens from the territory of the state, with the constitutional definition of legal grounds, the right to use not only housing, but also office and commercial space (§ 9), and others. The above provisions had a positive impact on the development of the institute for the protection of human rights and fundamental freedoms in the legal system of Ukraine.

Therefore, the draft 1920 «Constitution of the West Ukrainian people's Republic» by Stanislaw Dnistrianskiy, is a progressive act in the protection of fundamental rights and freedoms. Although it is not envisaged to guarantee the right to life and prohibition of death penalty and torture. Along with this, he really could at the constitutional level to guarantee a virtually complete list of human rights and fundamental freedoms, according to international standards the Convention for the protection of human rights and fundamental freedoms 1950 and its additional protocols.

Ivan Myshchak

ATTEMPTS TO CONSTITUTIONAL REGULATION OF THE LOCAL GOVERNMENT STATUS IN UKRAINE DURING THE UKRAINIAN REVOLUTION OF 1917 – 1921 YEARS

The views of Ukrainians on fair government for many centuries based on local self-government traditions. Ukrainian revolution of 1917 – 1921 years, the proclamation of the Ukrainian and West Ukrainian People's Republics, their union in one state made for the renew of Stating aspirations of the Ukrainian people. Ukrainian state raised hopes for the formation of such a government, where the people and the community are the real bearers of power and representative bodies actually defend the public interest.

Ukrainian state raised hopes for the formation of such a government, where the people and the community are the real power owner and representative authorities actually defend the public interest.

Relevant dreams embodied already in the Ist Universal of the Ukrainian Central Council of 10.06.1917. Article 5 of Constitution of the Ukrainian People Republic, adopted in April 29, 1918, guaranteed the rights of wide self-government. Ministers UPR could not interfere in the affairs of local self-government and all disputes were settled in court. However, the provisions of the UPR Constitution was not implemented.

The coup of April 29, 1918 headed by Hetman P. Skoropadsky, led to the further attempts of creation the Basic Law of the Ukrainian state. Separate chapter (fifth) of the Draft of the Ukrainian State statute devoted to the local government. Under Article 71 of the project Ukraine is divided into elderships, counties, parishes and rural communities, and in accordance with Article 73 the assemblies and their executive bodies – the Board had become representative local self-governments. In the project the competence of local government was all areas of local life. Indicative is the fact that the activities of the local central government was limited only by monitoring the legality of local governments activity, and theirs illegal decision could be canceled only in court.

After against-hetman revolt and restore the UPR, Directory declined from the Constitution approved by the Central Council and from the draft Constitution of P. Skoropadsky. All-Ukrainian National Council in early May 1920 adopted the Basic State Law on Ukrainian state system, developed by Professor of law S. Baran. According to Art. 3 of the project, parts of the Ukrainian State with specific economic interests, receive local autonomy and the right to adopt the legislation on local matters. It was assumed that the powers of communities, parishes, towns, cities, counties and higher above them self-government units will be determined by a particular law. Just by particular law should be regulated distribution of powers between local self-government and local central government.

However, constitutional draft approved by All-Ukrainian National Council was rejected. Instead was convened a governmental commission for drafting the Constitution, which included, among others, reputable Ukrainian lawyers S. Baran and O. Eyhelman. They proposed their own projects for the Commission considering. After lengthy discussions, a governmental commission approved the Basic State Law of Ukrainian People's Republic, with the S. Baran's draft in the basis. Unlike the previous draft, the right to autonomy received separate administrative units of the state, which have not only economic but also cultural features. Local authorities rights, compared to the draft of All-Ukrainian National Council, was greatly limited.

A. Eyhelman's vision of the UPR constitutional order was significantly different from the vision of other officials and members of constitutional commissions. As a result, O. Eyhelman published its own constitution draft in 1921. According to A. Eyhelmana, Ukraine had become a federal republic where every separate Land, as the Federation subject, have its own constitution. A. Eyhelman saw federal state democracy in wide powers of separate Lands. So, the Lands subordinated to the national authorities only in the borders defined by

Constitution. In all other cases they are managed independently and have their own constituent, legislative, judicial, executive and supervisory power. According to the constitution draft counties and communities were organized on the basis of independent public self-government. In each of them should operate the Council as the administrative authority and the Board as the executive authority. It was expected conduction the referendum to solution an important local affairs. However, lower local governments received only powers given them by higher authorities and local governments. In this case, the independence of local government seems largely declarative.

There have been attempts to constitutional consolidate the status of local governments in WUPR. In particular, before the Austro-Hungarian Empire crumble in 1918, famed Ukrainian lawyer Professor S. Dnistryansky developed and submitted to the Austrian parliament draft of temporary main laws to the Galician State. First offered to provide communities complete local autonomy and abolish the division on the own and delegated communities powers. Further S. Dnistryansky's vision of the state order WUPR was embodied in the draft of Constitution of the Western Ukrainian People's Republic of 1920. According to the draft Constituent Assembly had to hold on the division on the communities, the provinces and the regions. Had held elections to local authorities – regional, district and community protectorates. Regional protectorates received substantial powers fixed directly in the Constitution. Thus, according to paragraph 89 of the draft, activity sphere of regional protectorates had cover management and control of all the issues in the region that need centralized ordering and don't govern by general State legislation. Activity sphere of the district protectorates was similar, but it was limited by the districts local needs. In turn, public protectorate had to take care of law-order in local community within the general state laws and central authority's orders. Characteristically, the project provided the immunity of members of regional, district and communities protectorates, but only for the duration of theirs meetings. Unfortunately, this project also wasn't implemented.

Constitutional Law; Municipal Law

Natalia Agafonova

ISSUES OF METHODOLOGY OF RESEARCH THE CONSTITUTIONAL REFORM PHENOMENON

Today, in the science of constitutional law of Ukraine an independent scientific field of research the issues of constitutional and legal reform is formed. So methodology problem of the research is very important.

Methodology – is the knowledge about scientific methods of cognition of phenomena, about the system of scientific principles on which the study is based.

The methodology defines the way to achieve the research objectives, methods of obtaining the scientific knowledge. The key methodological reference of any study is its subject, which is part of the research object, that determines research methods and rules of their application.

In the modern legal environment the constitutional reform has constitutional and legal basis, consisting of norms of several articles of the Constitution of Ukraine, Regulations of the Verkhovna Rada of Ukraine, the Law of Ukraine «On All Ukrainian Referendum» and others. The current stage of constitutional reform defined in the Strategy for Sustainable Development «Ukraine – 2020». Prospects for constitutional reform outlined in the Agenda of legislative support of reforms in Ukraine, adopted by the Verkhovna Rada of Ukraine № 509-VIII of 06.04.2015. The document provides carrying out of constitutional reform, including the development of parliamentary system, improvement of election legislation, reform of the Cabinet of Ministers of Ukraine and the central system executive bodies and public administration in general, and the reforms of the judiciary and law enforcement agencies; reform of administrative and territorial structure and local governments. The dynamics of constitutional reform provided by the work of the Constitutional Commission established pursuant to the Decree of the President of Ukraine № 119/2015 of 3.3.2015.

The scientific literature defines the complexity and multidimensional methodological tools of constitutional reform study, which is due to the nature of the constitutional process. Modern constitutional law science recognizes methodological pluralism as an integrated approach to the study of constitutional and legal phenomena. The study of constitutional reform requires the use of methods of philosophy, politology, sociology, psychology, public administration theory, philosophy of law, politology of law, sociology of law, statistics, computer science, synergy etc.

Crucial to the research methodology of constitutional reform is the general dialectical approach. It allows to understand the root causes of the reform process, their development laws. The dialectical approach helps to reveal the nature of constitutional reform as a complex social phenomenon in its dynamics and due to political and legal reforms in the country.

The special method, that uses the science of constitutional law, is historical (historical and legal) method, which is important to study the constitutional reform.

It is based on the recognition of causation in the historical development of constitutional legal relations and constitutional law institutions. Using the historical method allows to underline certain features of constitutional reform of domestic (national) character, provides the basis for historical systematization and warns of possible errors application of theories, concepts, programs, doctrines and so on.

Because the nature of the object reform – constitution, constitutional reform is directly related to constitutional law. In this connection seems justified to apply axiological approach that have sense in view of the value of the constitution and the meaning of values protected and provided by this constitution. These values can not be lost or minimized in the process and as a result of constitutional reforms.

The difficulty of constitutional reform determines the spreading of relevant legal provisions in the various sub-branches and institutions of constitutional law, including parliamentary law, the constitutional process, the institutions of All-Ukrainian referendum, constitution protection, constitutional justice and others. The above shows the need for legal-dogmatic method because of the requirement to study the current Ukrainian legislation. Legal-dogmatic method required also for the study of specific legislative initiatives from the perspective of their compliance or consistency to fundamental norms of the Constitution.

Among the scientific methods should be called systemic, structural, functional and comparative methods. These methods are important for objective knowledge on specific issues of the legal understanding, state power, structure and functions of state bodies and others.

Constitutional reform as a political and legal process – from the formation of the prerequisites to practical implementation of the constitutionalism model has obvious system characteristics. Therefore, its study required a systematic analysis of constitutional law, its connection with other elements of the law system and the definition of systemically important characteristics and structure of constitutional reforms as the legal process filled with real economic, social and political content.

Functional method allows to know the fundamental properties and principal features of the constitutional reform, to define its basic functions. Structural and functional method makes it possible to know the content and forms of the functioning of constitutional reform's key institutions (components). It allows to analyze the connection of functions and jurisdiction of the state authorities and to identify the role of major constitutional reform's subjects.

Comparative legal method makes it possible to identify general trends of evolution certain constitutional and legal phenomena based on a comparative analysis of their development in different countries.

Important to study constitutional reform should be considered teleological method involves the use of category of objectives. Defining specific constitutional reform's objectives can be considered by the plan of it's implementation, and its general objectives correlated with the aim of state, aim of the Constitution as the basic law.

Constitutional reform as a complex dynamic phenomenon that is realized through the cooperation of a large number of constitutional law's subjects, requires the use of activity approach.

Activity method should be used for the study of the interaction of civil society and public authorities, interaction of the structural elements of the parliament, the president and parliament, the parliament and the constitutional court at different constitutional reform stages, and for valuation the quality of normative regulation of activity of the main constitutional reform's subjects, determination their place and role in the constitutional process.

The constitutional reform is highly demanded by society at the present stage of statehood development in Ukraine. Considering the peculiarity of the reform's object – the Constitution of Ukraine, as well as the complexity and multidimensional nature of the process of reforming, the study of the phenomenon of constitutional reform requires the use of complex methodology.

Olga Brynzanska

PERSON'S RIGHT ON CONSTITUTIONAL COMPLAINT AND PROCEDURAL PROBLEMS OF ITS REALIZATION IN A CONTEXT OF CHANGES TO CONSTITUTION OF UKRAINE

The Bill of Ukraine «Amendments to Constitution of Ukraine (about justice)» (№ 3524) was improved by Resolution of Verkhovna Rada of Ukraine № 962-VIII from February, 2, 2016. One of the amendments (art. 151[1]) is legal institute of individual constitutional complaint. According to this Bill the person who is sure that the final court decision in his or her case isn't based on law which is suitable for the Constitution of Ukraine has right to file a complaint to Constitutional Court of Ukraine. Also according the amendment this person has a right to file individual constitutional complaint if all domestic remedies have been exhausted exclusively.

From one side legal institute of individual constitutional complaint is a remedy of protection of constitutional rights of citizens. From other side procedural features of realization of right to file a constitutional complaint make some problems. First of all it is difficulty with conception of the amendment which is related with using notions «the final court decision» and «all domestic remedies» in sphere of basement for constitutional complaint. These notions are taken from European Convention on human rights but their essentiality in the Bill of Ukraine «Amendments to Constitution of Ukraine (about justice)» differ from essentiality of these notions in European Convention on human rights.

Analyzing some European Court of human rights' decisions we can come to conclusion about absence universal conception of «the final court decision» and «all domestic remedies». In European Court of human rights' decisions «Ponomaryov vs. Ukraine», November, 08, 2005 (№3236/03); «Shagin vs. Ukraine», December, 10, 2009 (20437/05); «Poltorachenko vs. Ukraine», January, 18, 2005 (77317/01); «Timotijevuch vs. Ukraine», November, 08, 2005 (№ 63158/00); «Zherdin vs. Ukraine», February, 2006 (№ 53500/99) «the final court decision» means decisions of local and appeal courts, high specialized courts or Supreme Court of Ukraine. It depends on circumstances of the case. By the way according European Court of human rights' legal position about an opportunity to appeal a court decision both must be based on the law and be real for using by party in civil or criminal procedures. It may be an opportunity to appeal a court decision to high courts or to file complaint to other ways, for example, to government or other institutions. Speaking about art. 151[1] the Bill of Ukraine «Amendments to Constitution of Ukraine (about justice)» (№ 3524) opportunity to appeal a court decision means, first of all, right to appeal a court decision to high court. So, there is appreciable differences between the Bill of Ukraine «Amendments to Constitution of Ukraine (about justice)» (№ 3524) and European Court of human rights' practice. This difference can make difficulty practice of national courts and content of the Bill must be define by law of Ukraine «About Constitutional Court of Ukraine».

According to p. 2 art. 150 of the Constitution of Ukraine Supreme Court of Ukraine can appeal to Constitutional Court of Ukraine with issues about conformity with the Constitution of Ukraine laws and other legal acts (constitutionality). It means that any person which is a party in civil or criminal procedures have a right to file petition to court with request to prepare petition to Supreme Court of Ukraine about conformity with the Constitution of Ukraine laws and other legal acts on which a party's claims are based. Supreme Court of Ukraine analyzes the petition and appeal to Constitutional Court of Ukraine with it. Therefore question have place: have all domestic remedies been exhausted if a party in civil or criminal procedures doesn't file petition to court? There is no clearly answer for this question in the proposed redaction of art. 151[1] the Bill of Ukraine «Amendments to Constitution of Ukraine (about justice)» (№ 3524). Besides p. 2 art. 150 of the Constitution of Ukraine the powers of Supreme Court of Ukraine in the sphere of appeal to Constitutional Court of Ukraine with issues about conformity with the Constitution of Ukraine laws and other legal acts are regulated by Law of Ukraine «On judicature and judge status». Some recommendations about preparing petitions about conformity with the Constitution of Ukraine laws and other legal acts are given to courts by Supreme Court of Ukraine (Resolution № 9 of Plenary Assembly of Supreme Court of Ukraine, November, 1, 1996). So, a party of civil or criminal procedure have a right to initiate a checking procedure of constitutionality of laws and other legal acts in the court of general jurisdiction. However, correlation between this way of protection of his or her rights and right to file individual constitutional complaint is out of the art. 151[1] The Bill of Ukraine «Amendments to Constitution of Ukraine (about justice)» (№ 3524).

Other issue is connected with a right to appeal for the protection of his or her rights to the relevant international judicial institutions, especially to European Court of human rights. Art. 35 of European Convention on human rights establishes admissibility criteria: «The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken». Is a filing to individual constitutional complaint in Constitutional Court of Ukraine necessarily for criteria of exhausting all domestic remedies? Researching European Court of human rights' decisions «Shott-Medynska vs. Poland», October, 9, 2003 (47414/99) and «Smyrnov vs. Russia», June, 7, 20077 (1362/01) we can come to conclusion that necessity to file to individual constitutional complaint is determined by circumstances of the case and depends on the place of institution of constitutional jurisdiction in the legal system. Constitutional Court of Ukraine is a court of law but not court for resolve the case and appeal to Constitutional Court of Ukraine is not necessarily for criteria of exhausting all domestic remedies. But if a person files to individual constitutional complaint he or she can miss a period of six months from the date on which the final decision was taken.

In summary, the Bill of Ukraine «Amendments to Constitution of Ukraine (about justice)» (№ 3524) define new is legal institute of individual constitutional complaint for protection of citizen rights. Legal bases and procedure for person's realization of right to file individual constitutional complaint, also its correlation with other ways of legal protection, must be regulate by law of Ukraine «About Constitutional Court of Ukraine».

Ludmyla Bulkat

THE CONTENT OF THE CONSTITUTIONAL CONCEPTS OF «SOCIAL PROTECTION» AND «SOCIAL SECURITY»

One of the basic factors that form the content of the social state all over the world is social protection. It is one of the most important indicators of the progress of any state in the world community. The developed system of social protection is now an integral part of a modern democratic state and is considered by an international community as a mean of achieving social justice and economic stability. At the same time, without the formation of an effective regulation of that system that would meet current international standards, which includes doctrinal ascertaining of the essence of social protection, its legal nature and place of the right to social protection in the system of constitutional rights, it is impossible to build real, not a declarative, social state in Ukraine.

The concept of «social protection» in the national legal science began to be widely used in the legislation on social protection at the present stage of its development in connection with its statement in the Constitution of Ukraine. It replaced the term «social security» which was used during the Soviet period and described specific legal form of social protection carried out directly by the state. At that time, due to the lack of theoretical development of social protection as a social and legal institution, the term «social security» is used in a broader sense to determine the totality of social and economic relations in the country, dealing with issues of social protection, and in this sense it defines the entire social security institute, called the «Law of social security». In a narrow sense, the term was used to determine the system of relations in the sphere of social security related to the provision of certain types of support from the state budget.

Limited interpretation of a «social protection» and equating it with a «social security» is rather controversial. After all, using in the legal requirements of Article 46 of the Constitution of Ukraine both concepts the legislator was just trying to show that they are, in any case, not identified as the same. Because the state is not limited to just a material support and not narrows the number of subjects to providing that support only to disabled citizens while guaranteeing the right to social protection. Therefore, the concept of «social protection» and «social security» should be considered as whole and its component, and the first concept in this case acts as the whole.

In constitutional sense the social protection, as social insurance and social assistance, serves an integral part of Social Security, its individual form, whose main purpose is to take care of those categories of people who are, by legally established procedure, entitled to long-term or permanent assistance (because of age, disability, lack of other sources of income) and to distribute costs of social protection.

The legal encyclopedia determines «social protection» as an important component of social security and defines the concept as a state system of citizens' protection from social risks (unemployment, illness, age, disability and others). The main organizational and legal ways to provide social security are a compulsory social insurance, social assistance to needy citizens, and state financial support of certain categories of citizens from the budget.

Understanding of the concept of «social security» as of a form of wealth distribution to support the vital needs of individual citizens upon the occurrence of social risk is divided according to the fact whether its done by a special social funds or the budgets of different levels, as the analysis and most researchers show.

According to some scientists, social security is a form of a social policy directed to a maintenance of certain categories of citizens from the state budget and special off-budget state funds in the event of the occurrence of circumstances recognized by the state as those of a great social significance, with a purpose of leveling those citizens to other members of society.

The obvious conclusion is that the concepts of «social protection» and «social security» are constitutional concepts. The first one relates to virtually all social spheres of a state, that is why it goes beyond the content of Article 46 of the Constitution of Ukraine and cannot be viewed solely as part of its disposition. The concept covers all social rights provided in all the basic provisions of the Fundamental Law of Ukraine, not only the right to social security, which, at the same time, is the core of the constitutional right to social security and serves as its base component.

Karim Yemelianenko

IMPLEMENTATION OF THE NEW POWERS BY THE LOCAL AUTHORITIES OF RURAL LEVEL IN THE DECENTRALIZATION PROCESS: PRACTICAL ASPECTS

The article researches the new powers of local authorities on the basic level in decentralization – the transfer of authority from public authorities to local councils in Ukraine. The article considers some practical aspects of implementation of powers by local authorities, such as: rural and village communities. The practical meaning of the article is to reveal the nature of the reform which deals with the implementation of new transferred powers from the Central level to the basic level of local government – villages, towns and cities. According to the article the powers of local self-government should facilitate and optimize the accessibility of citizens, legal entities or public associations to obtain administrative services. In particular, the article analyzes changes in the legislation relating to the implementation by local governments of powers provision of administrative services in the sphere of state registration, state control of architecture and building, State land service and the State migration service of Ukraine.

The article researched and analyzed the mechanisms of the functioning and execution of powers of local authorities at the basic level. We consider the practical thoughts and cautions about the proper enforcement of new local government functions in terms of control and administrative services. The authors indicate certain problematic aspects in providing of administrative services by executive bodies and village councils that need adequate service levels. Thus this publication notes that the delegation of authority to the lower link will enable local governments to bring their services directly to recipients – the citizens, legal entities, public organizations and associations. It can also become a relevant test on the ability of local community, which will determine the sufficiency of the community and its ability to unite around itself other territorial communities which are unable to implement the powers delegated to them in full.

Government policy on decentralization by transferring powers to the local level aims to overcome the subsidy level in the content of the administrative apparatus of the local Council, as according to the analysis of legislative laws significant portion of the funds will come from the provision of public administrative services should remain the local budgets of village, town and city councils, united territorial communities. According to the legislator opinion, he achieves the main task – ability of territorial communities. And practically they almost have to prove effective implementation of devolved powers.

One of important positive moment of decentralization of these powers is the fact that the most part of incomes of administrative services will do the rural or town budget more effective. Through a number of the powers granted the obvious and a certain lack of coordination between small rural councils. Because organizational, technical and fiscal capacity of rural councils leaves to be desired. By the above I would like to complement the practical aspects of the implementation of the powers of rural local government, that this way of developing self-government, particularly in rural areas, in Ukraine is irreversible. After Ukraine ratified in July 1997 the European Charter of Local authority a landmark European standards were accepted of their own local governments were adopted. And at the present stage of development is being implemented Europe-wide trend in this area precisely because of the gradual transition from the system of community management to the system of good governance – a democratic, efficient, according to the modern tasks, transparent, public and accountable local and regional governance.

Andriy Kalinkin

THE CONSTITUTIONAL MODELS OF STATE POWER DECENTRALIZATION: PROBLEMS OF DEFINITION AND IMPLEMENTATION

In modern constitutionalism decentralization conceptually usually acts as a manifestation of greater democratization of society, because decentralization of public power provides relative autonomy of management structures, gives them the right to make and execute decisions within their competence and bear them for legal and political responsibility. This decentralization creates not only rights but also certain duties at every level of public-powerful apparatus.

In that context, an important scientific and theoretical and practical-applied challenge that requires adequate solution in legal and constitutional and municipal law doctrine is comparative legal research models decentralization of state power in different national legal systems for the isolation and borrowing positive experience of a constitutional modernization of relevant government institutions.

In available studies no analysis models implementing decentralization principles to everyday management practices authorities and officials of public power is in the context of constitutional reform and broad constitutional modernization major public relations is an important scientific and practical problem at the present stage of intensification of konstytutionalization universal and European standards local and regional government in Ukraine.

The article investigates models of decentralization of state power in foreign countries for the purpose of drawing useful experience of constitutional reform the system of public authorities.

Analyzes key aspects of constitutional and municipal reforms in France, Britain, Germany and Switzerland in the distribution of constitutional powers between central, regional and municipal levels of public administration, relations between central and local authorities, forms and methods of state control over the activities of local governments.

Based on the analyzed foreign experience of constitutional reforms in decentralization supported the proposal to eliminate the state administration and the establishment instead of public offices exclusively control and supervision and coordination, not executive functions (the institute of prefectures and prefects), and the competence of government offices should focus only supervision and enforcement of the Constitution and laws of Ukraine.

It was established that the introduction of this approach gradually lead to genuine decentralization of public power, as the current situation shows that there are several levels of governance, which are expressed in the presence of the overlapping state executive authorities and local self-government is ineffective in the present conditions of social and legal development.

The author believes that the purpose of proper constitutional decentralization is fiscal, organizational and administrative of competence and strengthening local communities and their elected local government, which has found its expression in the implementation of municipal reform on samples of modern European countries and in accordance with European legal standards public governance and local democracy. Particularly relevant implementing European standards for local government legislation and legal practice is in terms of signing Ukraine Association Agreement with the European Union, the ultimate strategic objective to which the regulatory framework defined full accession of Ukraine to the EU – integration association, foundation on the principle of decentralization and maximize the scope of the rights of local communities with the provision of state real opportunity to solve local issues within current legislation.

Oleg Kurchyn

TECHNICAL STANDARDS AND THEIR ROLE IN URBAN PLANNING ACTIVITY: ONTOLOGICAL AND AXIOLOGICAL APPROACHES

The paper investigates the ontological and axiological aspects of technical standards in the context of their role in urban development.

As part of the municipal urban planning activities, the object of which is locally complex construction projects, united by a common plan structure, space solutions, engineering and transport infrastructure within the village, its functional areas (rural, industrial, center, resort, recreational, etc.), planning, residential district, district (quarter), suburbs (Art. 4 of the Law of Ukraine «On regulation of urban development» of 17.02.2011) – appears on determining spatial formation of the human environment and its attendant infrastructure.

Therefore, urban activity is a social poliob'yektnoyu and multilevel teleological, normative and procedural reasonable technological, including and technical activities authorized subjects, among which the most important are local authorities on planning and building areas. This conclusion is supported by the fact that according to Art. 2 Law of Ukraine profile, Planning and Development – is the work of state agencies, local governments, businesses and individuals, which includes: 1) the prediction of areas; 2) ensure rational distribution and identifying areas of sustainable development of territories; 3) study the distribution of land for the intended purpose; 4) of mutual state, public and private interests in the planning and building areas; 5) definition and management of the relative position of areas of residential and public buildings, industrial, recreational, environmental, recreational, historical, cultural and other areas and facilities; 6) set the development areas which envisages urban development; 7) the development of urban planning and design documentation, construction sites; 8) reconstruction of existing buildings and areas; 9) preservation, restoration and creation of recreational, environmental, recreational areas and objects, landscapes, forests, parks, some green space; 10) creation and development of engineering and transport infrastructure; 11) monitor development; 12) keeping urban cadastre; 13) control in urban development.

However, fixed regulatory framework of state regulation of territorial planning. Her instrument is planning documentation, which documentation is divided into state, regional and local levels. Such documentation is developed on paper and electronic media on the updated cartographic basis in digital form as sets of geospatial data relevant state geodetic coordinate system USC-2000 and a single system of classification and coding of construction to create urban cadastre database.

It was established that the regulation of urban development in theory faces one of the urgent problems of modern jurisprudence – the ratio of legal and technical standards and definition of the nature of the latter.

The author notes that, despite the fact that the phenomenon of «technical and legal norm» is still insufficiently explored, its existence and the role of social regulation, on the necessity of further research, because not only promotes the improvement of knowledge about the nature of technical, legal, and general law as such. This study: a) important for the development of general provisions in the law; b) can serve as a further development of industrial science; c) research the specifics of these rules has certain practical significance for contributing their proper application to specific circumstances and monitoring their implementation; c) a lot of technical and legal standards and increase the level of standardization of social relations in important areas of social life, which increases their value in proper legal regulation; d) in the face of international intergovernmental integration, such rules are international technical and legal standards, creating a common legal and procedural field of application and use.

The main features of the technical and legal rules that make them similar to the rules of law are: a) they come from the state (statist factor); b) they expressed the will of the state (imperative factor); c) compliance is ensured by the possibility of the use of state coercion (tort-prevents factor); d) they are objectified in the special regulations issued by the competent authorities or public (with the approval of state) agencies that also have a form of expression (formal factor); e) they regulate social relations (regulatory factor).

It is claimed that the technical and legal rules and their own characteristics: a) the content of their disposition is reflected in the legal act by means of technical requirements; b) unlike the laws expressed in the sentence, such requirements can be expressed in mathematical signs, formulas, tables, graphics; c) regulations contain technical and legal standards are technical and legal acts.

Mariia Markush

PHENOMENON OF COMPETITIVENESS AND CONSTRUCTION THE CONSTITUTIONAL AND LEGAL MODEL OF COMPETITIVENESS IN THE CRIMINAL PROCESS OF UKRAINE

The process of establishing of the rule of law must be correlated with the formation of such a method of legal regulation of every legal sphere that would ensure interests of the individual and the limited capacity of the state for their oppression.

The doctrine of national constitutional law virtually does not contain any solid study of the institute of the contestability. In terms of legal and administrative reforms in Ukraine searching for the effective human rights protection mechanisms, among which are contestability and competitive model of justice, is necessary.

The need to improve judicial procedures is determined by a number of international requirements in the sphere of human rights protection recognized by Ukraine and by principles of justice enshrined in international legal documents.

Contestability in law is primarily seen as a general democratic and legal principle, as the basis, which is to ensure the lawful and peaceful nature of relations in society, it is largely the social and legal ground of those legal rules and institutions of national law which are dispositive.

Contestability in the procedural law determines and provides a real opportunity for the competitive parties to prove their position, creates conditions for objectivity of a hearing and making a fair decision in any trial, protects the subjects to the legal relations as well as society and the state from the rights abuse and abuse of authority; contestability in the law provides the procedure of settling disputes (conflicts) and a legal order in general, helps to identify the merits of legal problems, eliminate the drawbacks of legislation, ensure effective consideration and consolidation of new legal instruments, that had already proved their success and, therefore, serves as an independent legal resource that defines development of law and has a significant potential for self-development.

Legal contestability is considered to be a legal phenomenon that reflects a system of principles, conditions, methods and legal mechanisms for finding the truth and installing the most appropriate opportunities. Competitiveness takes an institutional function, because it is acting as principle or basis, which essentially provides the background for a democratic state with a rule of law.

So: 1) contestability as a phenomenon is a process that arises from the collision, conflict, struggle between two or more parties, processes, phenomena which becomes the rivalry between them, the result of which may be the emergence of a new form of competition or mutual exchange between them and the transition a new system of quality; 2) the phenomenon of contestability in the aspect of social order is a positive factor that ensures the stability of the social system; 3) the phenomenon of contestability is a fundamental factor in social development.

The study showed that: a) contestability as a phenomenon is a rich, multi-dimensional, versatile, complex, systemic phenomenon, which is a means of resolving conflicts, install and maintain the equilibrium; b) contestability is a universal mechanism in the regulation of social relations, characterized by systemic qualities and inherent only in an open social system and occurs between similar objects; c) contestability is one of the main factors of individual adaptation to social life in the process of socialization and, on the one hand, it appears as rivalry between biological and social principles, and from the other – as a contest of social principles and those, which are beyond social: norms and values; d) contestability in the social and cultural system is characterized by adversarial selection processes and associated social ordering of sustainability and stability; e) contestability in a social conflict is the driving force of social transformation, which results in a change of their structure and the generation of new features; f) contestability in law is an efficient and effective means to ensure human rights and freedoms; g) as a model of adversarial criminal process contestability is a theoretical construction that reproduces, from the point of the most common structural and functional mechanisms, national criminal justice and judicial system.

Contestability of the parties, their freedom to bring their evidence before the court and proving their credibility to justice is one of the fundamental principles of justice (par. 4 ch. 3 of article 129 of the Constitution of Ukraine). This constitutional provision, which is embodied in many legislative acts, has become an impetus for the gradual introduction of ideas of adversarial model of criminal proceedings which have been successfully implemented in developed countries for a long time.

The development of the mechanism of criminal justice, securing guarantees, aimed to ensure the rights and legitimate interests of its members, are not possible without building adversarial model of

criminal justice, which would provide this level of security to the parties and participants which would exclude the possibility of illegal and unjustified violation or restriction of their rights and freedoms in all stages of the process.

Consolidation of basic principles of the court and pre-trial investigation activities on the constitutional level arises necessitates of fundamental changes in the form of criminal justice in Ukraine. This requires a deep theoretical rethinking of fundamental criminal procedure categories in the new political, legal and social realities. These categories in science of criminal proceedings include, in particular, contestability and adversarial model of justice, competitive type and form, procedural equality of participants in criminal proceedings.

Civil Law and Civil Process

Halyna Dmytrychenko-Kuleba

THE PECULIARITIES OF LEGAL REGIME OF GEOGRAPHICAL INDICATIONS, ORIGINATING FROM THE REGION OF THE AUTONOMOUS REPUBLIC OF CRIMEA

On March 21, 2014 the Russian Federation Council ratified the Treaty between the Russian Federation and the Republic of Crimea on acceptance of the Republic of Crimea to the Russian Federation and establishment of new objects in its structure, namely the Republic of Crimea and the Federal city of Sevastopol. Ukraine and most countries do not recognize the change of status of the Autonomous Republic of Crimea and the city of Sevastopol, however, the annexation factor has the tremendous impact on both, the activities of economic entities of this region, including those that use the geographical indications in their activities and the legal regime of the respective geographical indications.

As the object of intellectual property right, the geographical indication has a direct link with a particular state, and is the indication of a certain area (geographic location), from which the goods come, the special properties of which originate from natural conditions that are the characteristic to this geographical location or a combination of these natural conditions with the human factor that is characteristic to this geographical place.

The Ukrainian state register of names of origin places and geographical origin indications of goods and rights to use the registered qualified indications of goods origin includes 42 indications, 6 of which originate from the territory of the Autonomous Republic of Crimea, namely: «

Novyi Svit» («Новий Світ»), «Sonyachna dolina» («Сонячна Долина»), «Zolota Balka» («Золота Балка»), «Meganom» («Меганом»), «Balaklava» («Балаклава») and «Magarach» («Магарач»). On the 1 of January 2016, 110 indications, which receive the protection in accordance with the Association Agreement between our country and the European Union, were added to the list of geographical indications, to which the protection on the territory of Ukraine is given.

The output element (composite part) of the legal regime of geographical indications is its registration with proper description of the relevant properties of products (goods), which are produced with its use. The specific properties, which may be expected by the consumers of the product linked to a specific geographical place by the label, need to have a stable and known character.

The law of Ukraine «On protection of rights to indication of goods origin» confers the definite obligations on the owner of the certificate. Thus, a certificate owner shall not: suppress (prevent) special authorities to monitor the presence of product's special properties and other characteristics, on the basis of which the geographical indication and/or the right to its use is registered. He is also obliged to ensure compliance of the quality, particular properties and characteristics of goods with their description in the Registry.

In accordance with the decree of the Cabinet of Ministers of Ukraine «On specially authorized bodies for determination and control of particular properties and other characteristics of the goods» dated April 23, 2001 No. 149-R, the above mentioned powers are given to the relevant central executive authorities, namely the Ministry of Agrarian Policy, the Ministry of Culture, State service of geodesy, cartography and cadaster, the Ministry of health.

The above mentioned public authorities fail to fulfill their responsibilities of monitoring the quality of goods marked by geographical indications due to the annexation of the Peninsula.

The inconsistency of marked qualified indication of origin of goods to the declared properties, the loss of such properties is the basis for deprivation of legal protection of such indication on the basis of the termination of its registration, recognition of its registration as invalid. Another reason for the termination of the right of use of the registered qualified indication of origin of goods, in accordance with the law, is the liquidation of the legal entity that owns the certificate.

By the decree of the State Council of the Republic of Crimea «On the nationalization of the property of enterprises, institutions and organizations of agroindustrial complex, located in the Republic of Crimea» d.d. March 26, 2015 No. 1836-6 / 14, it was decided to nationalize republican enterprise «Azov liqueur and vodka factory», State concern «National industrial and agricultural association «Massandra», State enterprise «Agricultural company «Magarach» of National Institute of

grape and vine «Magarach», state enterprise «Factory of sparkling wines «Novy Svet» to the property of the Republic of Crimea.

Thus, according to the Unified State Register of Legal Entities, individual entrepreneurs and community groups, none of the abovementioned entities is in the process of termination.

As it's known, the certificate, which confirms the registration of rights to use the qualified indication of origin of goods, is valid for 10 years from the filing date. After the expiry of the period, the validity of the certificate may be extended, subject to confirmation that the certificate owner manufactures product in the geographical place specified in the Register and product characteristics match the characteristics included in the Register.

Thus, the abovementioned fact gives grounds to assume that the users of geographical indications, the location of which is in the Crimea, in case of maintaining the legal regime of the peninsula after the expiry of the certificate, certifying the right to use the qualified indication of origin of goods, won't be able to prolong them.

On January 17, 2016 the decree of the Cabinet of Ministers of Ukraine «On limiting the supply of specific goods (works, services) from temporarily occupied territory to another territory of Ukraine and / or from the other territory of Ukraine to the temporarily occupied territory» d.d. December 16, 2015 No. 1035 came into force. In particular it put a ban on the supply of goods (works, services) on the period of temporary occupation under all customs regimes from a temporarily occupied territory to another territory of Ukraine and / or from the other territory of Ukraine to the temporarily occupied territory, except for some personal belongings, socially important food products, electricity supply, goods of strategic importance for sectors of the economy and national security and humanitarian assistance.

That is, in law, taking into account the fact that the registration of geographical indications is valid, the owners of certificates of registration and certificates for the right to use such indications have rights and responsibilities under the laws of Ukraine. However, de facto, the relevant entities are limited in supply of goods to Ukraine, because public authorities cannot provide their quality control, because Ukraine lost opportunities adhere to usage mode of geographical indications, and respectively the citizens of Ukraine lost access to goods with this marks.

According to the Law of Ukraine «On the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine», our state recognized the land territory of the Autonomous Republic of Crimea and Sevastopol as temporarily occupied territory. Article 1 of this law established that temporarily occupied region is an integral part of the territory of Ukraine and the Constitution and laws of Ukraine apply to it. However, the analysis demonstrates that the implementation of the legislation of Ukraine is complicated on this territory, in particular in the field of intellectual property.

Vitalii Mazur

THE PROBLEM OF DETERMINATION THE STRUCTURE OF THE CIVIL LAW REGULATION MECHANISM

The mechanism of civil regulation is a general concept introduced for consolidation and description within its framework of individual components holding a relatively independent position in the internal structure of the mechanism being in close interrelation and interaction with one another. During such interaction, these components or elements ensure the process of civil legal regulation of certain civil relations. Therefore, the study of the mechanism of civil legal regulation would be incomplete and ineffective without a focus placed on its structure, i.e. the components, which together form its internal structure and constitute an integral concept thereof as a system of civil legal means.

In civil law science today there is no single generally accepted view in terms of determining the structure of the mechanism of civil regulation. A similar situation exists at the level of general studies of the structure of the mechanism of legal regulation.

In order to avoid arbitrary and unsystematic definition of components of the structure of the mechanism of civil regulation it is necessary to apply a certain clearly defined criterion for their definition. Failure to apply this criterion could lead to the fact that the category of «mechanism of civil regulation» might become either too general (to include the majority of legal phenomena), or, on the contrary, too narrow (to exclude legal phenomena specifically designed and required to describe the regulatory impact of law on civil relations).

Within an instrumental methodological approach in terms of understanding the essence of the mechanism of civil regulation, stages of civil legal regulation process constitute such criterion.

In legal literature, experts suggest expanding the structure of the mechanism of legal regulation and therefore into the structure of the mechanism of civil regulation by such elements as lawmaking, legal awareness and (or) legal culture, lawfulness, law order, acts of interpretation of legal norms, regulations etc. In our view, the attempts to include into the structure of the mechanism of civil regulation almost all legal phenomena as a whole should not be deemed correct. In particular, this leads to leveling the meaning of the mechanism of civil regulation as a tool that ensures regulatory impact of a civil law norm on respective civil relations, since its structure includes legal phenomena of quite different nature that are not directly involved in civil legal regulation and therefore do not have a regulatory potential.

Overall, we believe that the structure of the mechanism of civil regulation should include the following elements: 1) civil law norm and forms of its expression corresponding to the first stage of civil legal regulation process – ensuring general regulatory effect of the civil law norm; 2) legal facts corresponding to the second stage of civil legal regulation – occurrence of specific circumstances in life to which the civil law norm ascribes emergence, modification or termination of civil legal relations; 3) civil legal relations that correspond to the third stage of civil legal regulation – emergence of specific subjective civil rights and legal obligations constituting the meaning of specific civil legal relations; 4) act (action or omission) of direct implementation of subjective civil rights and immediate implementation of civil obligations – corresponds to the stage of implementation of subjective civil rights and obligations and achievement of the goal of civil legal regulation; 5) civil legal means of protection of civil rights and interests of subjects of civil relations – corresponds to the stage of protection of subjective civil rights and legal interests. The last element of the structure of the mechanism of civil legal regulation is optional (not necessary), as it applies only in case of civil violation.

Larisa Neskorodzhena

COMPENSATION FOR DAMAGE CAUSED DURING MEDICAL CARE PROVISION

Everyone who applies to health facilities for medical aid, is counting on high-quality, appropriate, effective and timely assistance. However, increasingly from different media and their friends, we learn about a situation where inadequate provision of medical care resulted in injury to a person or her death. Penalties medical officer and the medical establishment for damage – is the greatest desire of victims of inadequate medical care. But the analysis of jurisprudence indicates that courts decide controversial issues of damages caused to health and medical workers on different understandings of the principle of reasonableness and fairness. In some cases, they partially satisfy the claim, others denied completely. The question of compensation for damage caused to health care repeatedly examined various scientists. However, this issue does not lose its relevance, as is multidimensional, is diametrically opposed to scientific opinions and needs further study.

The article is a study on compensation of damage caused to health workers, such as compensation for material and moral damage.

We have been researching the law in force to research the concept of «harm caused to people's health» because judges are not experts in the field of medicine and so different can understand the concept of «harm caused to the health of the person». In the current legislation is not given to the definition of «harm caused to people's health», because it was suggested to make Article 82 of the Basic Laws of Ukraine on health care, namely attributed to the injury that caused the provision of medical care:

injuries, which are in violation of the anatomical integrity of tissues and organs or physiological functions;

emergence mostly associated disease patients consistently developed the disease process or disease state leaving the disappearance (recovery) persistent consequences of failure in a distortion of the exterior of the body, dysfunction of organs or systems;

infection incurable disease or illness that requires temporary or permanent exclusion from society;

irretrievably lost the opportunity to cure the patient, and the development of mental illness that has arisen as a result of medical intervention.

This will help both judges and experts on a clear definition of harm caused by medical personnel. Civil Code of Ukraine stipulates that property damage can be (Article 22) and moral (Article 23).

If for compensation of property damage in courts there are no questions, then on moral damages are so many questions, such as how to calculate the amount of compensation for moral damage. Part 3 of Article 23 of the Civil Code of Ukraine stipulates that the amount of monetary compensation for moral damage is defined court depending on the nature of the offense, the depth physical and mental suffering, deterioration of skills the victim or deprivation of their feasibility, the degree of guilt of the person which caused moral damage, if guilt is the basis for compensation, as well as the other circumstances which are essential. In determining the amount of compensation takes into account the requirements of reasonableness and fairness.

Analysis of the legislation of Ukraine regarding non-pecuniary damage and court cases showed that courts in addressing the issue of compensation for moral (non-property) damage may prescribe psychological expert examination and ask questions about the possible amount of monetary compensation for the suffering (non-pecuniary damage).

However, the provision of expert opinion on the amount of compensation for moral damage does not mean that the court will consider the said amount in full.

With a view to uniform application by courts of provisions for non-pecuniary damage caused to the provision of medical care was proposed regulatory fix the amount of compensation for moral damage given type of damage to health.

Kateryna Spysarenko

OVERVIEW OF METHOD AND FOUNDATIONS OF PROPERTY RIGHTS ACQUISITION

The article is devoted to research of question of correlation of concepts «method of property rights acquisition» and «foundation of property rights acquisition».The author pays much attention to the coverage question of the definition of method and foundation of property rights acquisition. Expands the problem of classification of these two concepts. In legal literature, the most common is the classification of method and foundation of property rights acquisition for primary and derivative.

However, it is worth mention that the specified classification is rather conventional, because when you change certain circumstances classification signs can vary. One of the major problems which is shown by the author is the identification of such concepts as method of property rights acquisition and foundation of property rights acquisition. Indicated concept although are different, but on the other hand they are interconnected. Civil Code of Ukraine generally avoids the concept of foundation of property rights acquisition.

The problem of property rights acquisition is widely documented in the literature. At different times this issue was seen by many scientists, for example Masevich M., Popovich I., Sannikov I., Safronov V., Cherepahin B. The great number of scientific works of such scientists as Bondarenko D., Voronina N., Golubeva N., Goncharenko V., are devoted to the consideration of individual aspects of the problem of method and foundation of property rights acquisition.

The property is traditionally considered the centerpiece of the Institute of civil law. Problems of property relations and the property rights acquisition never lost relevance. The property rights acquisition ordered even in Roman law.

Institute of property rights is constantly evolving, as it is important to consolidate not only the opportunity to property rights acquisition, but also the ways and reasons according to which such entry is legitimate. Firstly institute of property is an important legal form, which is the basis for the provision of various material needs of citizens. The basis for this is in particular the legal grounds for the emergence of property right.

Secondly, the importance of scientific development of the question of the grounds and ways to property rights acquisition is due also to the processes of integration of our country into the European Community, as well as bringing national legislation into conformity with modern standards of international rights.

Thirdly, existing published research in Ukraine, often devoted to general problems of legal regulation of property relations, the place of civil contract in the case of property rights.

The introduction in 2004 of the Civil Code of Ukraine led to the emergence of new approaches and forms of acquisition of the property. Complex research questions the grounds of property rights acquisition today is missing. The above implies the necessity of the theoretical rationale and identifying the ways and reasons to property rights acquisition, because they have the features.

The article highlights the key methods of property rights acquisition which include laps, including the contract, the Court's decision and the grounds listed in Chapter 24 of the Civil Code of Ukraine. Article 328 of the Civil Code of Ukraine specifies that the property rights is acquired on the methods which are not prohibited by law, in particular by laps. So in addition to the mentioned in Chapter 24 of the Civil Code of Ukraine methods, there may be and others, most importantly to conform the main criterion specified in Article 328 – not forbidden by the law. From the foregoing it is considered that the Civil Code of Ukraine contains neither exhaustive list nor a systematization of the methods of property rights acquisition. The author made the conclusion that method and foundation of property rights acquisition are not the same concepts, but on the other hand they are interrelated with each other.

Scientists explore the question of concepts method of property rights acquisition and foundation of property rights acquisition for a long time. We can conclude that concept of foundation of property rights acquisition means fixed by norms of law ideal model that describes what the legal facts and in which sequence should take place for a relevant reason to property rights acquisition. The method of property rights acquisition is a legal fact in the presence of which arises the property rights as a subjective right.

Economic Law, Law of Commercial procedure

Yuliia Tyshchenko

SIGNS OF INSOLVENCY AS GROUNDS TO INITIATE THE BANKRUPTCY PROCEEDINGS

The article analyzes the norms of national legislation concerning the legal regulation of insolvency as a basis for initiating bankruptcy proceedings, the rules of regulatory legal acts of foreign countries in this sphere.

Abstract signs of insolvency, the presence of which allows the debtor to the creditor or file for bankruptcy in court.

As is known, the excitation of the bankruptcy case is always a negative impact on the operations and future fate of the enterprise, so a detailed analysis of attributes that define the insolvency of the debtor and give reason to initiate against it the bankruptcy case is appropriate in the context of ensuring the stability of the economic system of the state.

It is established that such features is the size of a monetary obligation, the period of non-payment of a monetary obligation, and the absence of a dispute concerning a monetary obligation.

The concept of «financial obligations» is a category of the many branches of law such as civil, commercial, financial, labor and others. The essence of this concept, regardless of the nature of relations in which it occurs, it is to ensure that the monetary obligation is a legal relationship in which one party (the debtor) is obliged to pay a certain sum of money in favor of the other party (the lender), and the creditor has the right to demand from the debtor the performance of his duties. And depending on the grounds for the emergence of this liability (civil contract, a contract of employment, tax debt) can talk about civil law, labor, tax, monetary obligation.

In the field excitation of bank business, financial obligations is regarded as the debtor an obligation to pay a sum of money for the civil contract, the obligation to pay taxes, fees and other mandatory official payments, the amounts that are due to the impossibility of performance of obligations under other treaties, and which should Bat expressed in monetary units. It was found that under the financial obligations implied obligation of penalty payment, as well as the obligations arising out of harm to the life and health of citizens, the obligation to pay a royalty obligations to the founders (participants) of the debtor – legal entity resulting from such participation.

Thus, the definition of a monetary obligation to the Bankruptcy Act has a special meaning that is different from other legal acts, which contains such a notion.

Polyak offers corresponding concept defined as «monetary claim» or «claim of creditors,» which, in our opinion, it is appropriate and delineates the category of «financial obligation» in the broad sense, by a narrower, which is used in the production of the bankruptcy proceedings .

Analyzed legislation about bankruptcy of such countries as France, Germany, USA, United Kingdom, Russia for a fixed amount of a monetary obligation as a base excitation of the bankruptcy case. It was found that in some of these countries the size of the monetary obligation as a base excitation of the bankruptcy case is not determined. But in the article it proves that the Law of Ukraine size monetary liability used as appropriate.

According to the third part of Article 10 of the Law on Bankruptcy, bankruptcy proceedings initiated if the undisputed claims of the creditor against the debtor are not less than three hundred times the minimum wage, which has not been satisfied by the debtor within three months after the set for their maturity.

Symptom absence of a dispute concerning the monetary obligation is the existence of the judgment of the legality of the money lender to the debtor as a mandatory base excitation of the bankruptcy case. In support of this is evidenced by the jurisprudence on this issue.

In occasion of this thesis the researcher suggested some amendments, namely the impossibility of ignoring the new methods of pre-trial settlement of commercial disputes, such as mediation. And suggested the possibility of changing the rules of the law in this respect.

As a result, it was concluded that the Law of Ukraine «On the resumption of debtor's solvency or recognition of his bankrupt» fixed excitation business objective grounds for bankruptcy, but certain provisions require clarification and improvement.

Administrative Law and Administrative Process; Financial Law; Informational Law

Victor Ladychenko
Viacheslav Kolomiichuk

LEGAL BASIS OF COMPETITIVE SELECTION IN THE PUBLIC SERVICE

The particular scientific analysis of the public service institution in the context of the history of its formation, improvement and development in Ukraine, in particular in the framework of a competition for a public servant post, is caused by the constitutional endorsement of the further development perspectives both in legal and social vectors. Thus, the necessity to ensure effective establishment of the rule of law principle, to harmonize the Ukrainian legislation that governs public administration in accordance with the European legislation, is caused by the intention of our country to become a full member state of the European Union. At the same time, according to the World Economic Forum's Global Competitiveness Index for 2014-2015 Ukraine still faces widespread challenges. The country was ranked 130th among 144 countries in the public institutions index that indicates the imperfection of services within the particular area.

Deep theoretical research of the institution, studying the very essence of its reforming and further development dynamics will provide us with an opportunity to examine the specific role of the state as a regulator and outline the main directions to enhance public relationships on the level «state-citizen».

According due to the standing Law of Ukraine «On public service» from 16 December 1993, the public service in Ukraine is defined as «the professional activity of the persons occupying positions in state bodies and their administration on practical accomplishment of tasks and functions of the state and receiving the salary for the account of public funds».

The particular legal act envisages that the public service includes professional labor activity of individuals in public administration bodies, execution of public administration's tasks and functions and the remuneration sources. Therefore, definition, main features, objectives and functions of public service can be defined only through the disclosure of interconnections and interdependence of public service goals, objectives, functions, and methods at the state level.

Currently the competition procedure for substituting public service vacant posts in Ukraine is indirectly mentioned in the Articles 4, 7, 11, 15 of the Law of Ukraine «On public service» from 16 December 1993 and is envisaged the in Articles 2 of the Law of Ukraine «On public service» from 17 November 2011, which will take effect on 01 January 2016.

Under the standing legislation, the procedure of competitive selection is carried out gradually and it consists of the following stages: publication of a public authority's announcement on introducing a competitive selection in press or disseminating it via alternative mass media channels; receiving documents from persons that eager to take part in such competition; their preliminary examination for compliance with the established requirements; examination and selection of candidates.

However, in practice, announcements on introducing a competitive selection are commonly not published in press and are not disseminated via media channels, but instead they are placed on the public authority's official website. Moreover, the legislation is also being violated when the employees of the authority, where a contest has been announced, are not informed thereof.

Among the drawbacks that occur during public activity there also should be mentioned a gap in the legislation, according to which it is not determined how to properly evaluate the health condition of public servants regarding whether they are able to continue performing their public functions in relevant state authorities.

It should also be noted that the legislation does not set a deadline for the documents receipt, but only prescribes a period within which such documents must be accepted. Consequently, the completeness of the information received by a public authority, which a candidate has provided, and the correctness of the date, defined for the contest conduction, are uncontrollable.

Summing up, it should be noted that according to the conducted research, based on the analysis of national and foreign legal regulation of competitive selection of public servants, analysis of scientific works, a conceptual synthesis on the abovementioned subject has been conducted, there were

indentified key steps of improving competitive selection under the Ukrainian public administration system based on the previously specified problematic issues.

The history of competition within the public administration system of Ukraine is divided into the following stages: emergence of the competition in the public service (the end XV – the middle of the XVIII century.); competition in the public service during the West Ukrainian People's Republic (1918–1921); competition in the public service in the Soviet era (1917–1991); modern period of competition development in the public service of the independent Ukraine (since 1991).

The most appropriate and comprehensive definition of public service was proposed by the author. He defined public service as public, professional, politically impartial and independent activity concerning practical performance of tasks and functions of the state, based on inter-sectoral and specialized principles, which functions on the basis of the state budget financing.

A list of key points to enhance the existing institutional organization of public servants' competitive selection was proposed. Thus, these very bulletpoints were connected with every stage of the competitive selection process: searching for potential candidates, monitoring and evaluating competition results as a legislatively regulated procedure of conducting contest within the statutory terms of public servants' selection.

Yuri Onischyk

FEATURES OF THE APPLICATION OF LEGAL NORMS CONCERNING THE EXTRADITION OF PERSONS IN THE COURSE OF INVESTIGATING THE FINANCIAL OFFENSES OF TRANSNATIONAL NATURE

The article investigates the features of applying international treaties and laws of Ukraine concerning the extradition of persons during investigation of transnational financial offenses.

It is emphasized that in the context of this article, the term «financial transnational nature of the offense» is understood in a broad sense, as socially harmful, wrongful, culpable act of person capable of committing delict who violates legal norms that regulate formation, distribution and use of public funds, funds, which is planned or committed in several states, or committed in one state but has substantial effects in another, and for which the law provides for financial, administrative and criminal responsibility.

Given the generalized category of «financial offense», among such violations there are crimes that infringe on the financial relations.

It is noted that one of the most important forms of international cooperation in criminal proceedings is extradition of relevant persons. Within the framework of international cooperation in the fight against crime there is such particularity that the authorized subjects of international law (based on national and international legal norms) establish legal relationships in order to transfer a person with a view to bringing him/her to criminal prosecution and punishment.

Analyzing the provisions of international treaties and the national legislation, it is observed that their contents reveals the presence of legal rules that define the special procedure (different from the general) to be applied in regard to crimes of financial nature.

The main international treaty on extradition of persons is the European Convention on Extradition of 13 December 1957. First in Art. 5 of the Convention stated that extradition is made for offenses relating to taxes, duties, customs and exchange only if the Contracting Parties have adopted such a decision in respect of any such offense or category of offenses. Only with the adoption of the Second Additional Protocol to the Convention on March 17, 1978 Art. 5 was presented in the new edition. According to Art. 2 of this document for offenses relating to taxes, duties, customs and exchange extradition made by the Contracting Parties under this Convention if the offense, under the law of the requested Party, corresponds to an offense of the same nature. At that extradition shall not be refused on the grounds that the law of the requested Party does not impose the same kind of tax or duty or tax, fees, duties or currency in the same way as the law of the requesting Party.

Non-proliferation mechanism of legal assistance in criminal proceedings fully to financial violations, especially initially was due to their ambiguous attitude on the part of legislators in individual countries. For example, the law of Luxembourg criminal penalties for tax evasion so far not provided, and in Switzerland, tax fraud referred to the subject matter of administrative law. Israel does not comply with international investigative commission in the investigation of criminal cases initiated under the evasion of taxes. This attitude to fiscal offenses contained in several international instruments.

At the same time, noted that in most of willful to tax obligations, resulting in tax evasion, clearly regarded as socially dangerous punishable act. Also, please note that such offenses are often combined with other crimes, including those that are of great public danger. In this regard, recent approaches and the corresponding change in the international practice. In any case, restrictions similar to those described above were eliminated completely, if we, for example, against the financing of terrorism or organized crime.

Separate bilateral agreements on extradition with the participation of Ukraine also contain provisions on extradition of persons who committed financial offenses.

It is noted that the competent authorities of Ukraine can make arrangements for extradition of persons under investigation not for all financial offenses, as extradition of offenders can be carried out only if, according to the law, at least one of the offenses, in regard to which extradition is requested, implies a penalty of imprisonment of not less than one year.

Analyzing financial crimes provided for in the Criminal Code of Ukraine, we can conclude that for some financial crimes it is not possible to implement measures to extradite a person because their sanctions do not provide for punishment of imprisonment. For example, a crime under Art. 212 of the Criminal Code of Ukraine does not provide for punishment of imprisonment. A similar situation is with

evasion of paying a single fee for obligatory state social insurance and insurance contributions for obligatory state pension insurance. However, an exception may be a case where tax evasion is linked to other crimes where sanctions involve penalties of imprisonment (for example, if tax evasion will be preceded by legalization (laundering) of proceeds from crime).

It is concluded that, along with numerous organizational problems, the measures of extradition of persons, international treaties on extradition of violators are aimed primarily at combating ordinary crime and do not take into account the specifics of activities concerning investigation crimes of financial nature. In this regard, today the crucial issue is the issue of improving the provisions of international treaties and laws of Ukraine concerning the extradition of persons during investigation of financial offenses of transnational nature.

Mykola Sambor

SUBSTITUTE OF ADMINISTRATIVE RESPONSIBILITY: PROBLEMS OF LEGISLATIVE REGULATION

Administrative responsibility is always in the spotlight. Accentuation attention to the whole problem of administrative responsibility and administrative responsibility for certain administrative offenses leads to that lost interest in theoretical institutes administrative proceedings. The latter, in our view, form the foundations of administrative responsibility, and therefore constitute a very important methodological significance.

Based on the above, the purpose of our study was elected clarify the legal regulation of administrative responsibility replacing disciplinary liability within the context of art. 15 of the Code of Ukraine on Administrative Offences.

Art. 15 CAO contains a warning about the impossibility of bringing to administrative responsibility of certain categories of officials, such as military personnel, conscripts and reservists during their meetings and servicemen of the State Penitentiary Service of Ukraine, civil defense and the State service for special communications and information protection of Ukraine, the police, who are responsible for the administrative offense under disciplinary statutes.

So, in case of a military person or soldiers and officers of the internal affairs of an administrative offense as a general rule be substituted one type to another legal liability that literature was named responsibility substitute.

Consider features of regulation of liability for administrative offenses by police disciplinary statutes. In summary we can state that the rules of the CAO in substitution of administrative responsibility for disciplinary responsibility of police rather shaky. Their implementation does not allow to develop a unified approach because Disciplinary Regulations of Internal Affairs of Ukraine does not contain any relevant direct links substitute disciplinary administrative proceedings. Instead, the rules of the Disciplinary Statute of the internal affairs of Ukraine can be seen that, firstly, Discipline can be subsidiary on administrative Secondly, the term «offense» is so broad, covering any violation of the current legislation of Ukraine, including those directly defined as crimes or administrative offenses.

In this regard, consider the military as the exclusion of the subjects of administrative offenses under Art. 15 CAO to form the overall thinking of possible substitution administrative responsibility. On the basis of the rules of the Disciplinary Code can be summarized that the rules of the Disciplinary Statute of the Armed Forces of Ukraine compared fully with the provisions of art. 15 CAO, thereby providing substitute of two types of liability: administrative and disciplinary.

To confirm or refute two different approaches that we saw on the analysis of the Disciplinary Regulations of the Armed Forces of Ukraine and the Disciplinary Statute of the internal affairs of Ukraine, consider the disciplinary regulations of civil protection, because of privates and officers of civil protection as they say in art. 15 CAO. Based on the content standards analyzed Disciplinary Code civil protection conclude that the rules last ascertain the fact that persons of ordinary and chief of civil protection for administrative offenses are exactly substitute of administrative liability and disciplinary administrative proceedings in this case no.

Summing up the review of three disciplinary regulations, adopted in the period from 1999 to 2009, with certainty we can say that over the decades that have passed since the adoption of the «oldest» disciplinary statute of the «newest» not produced a single doctrine to prepare disciplinary regulations and harmonization their provisions with already existing legislation of Ukraine, including rules CAO. As a result, conflicts arise regarding the application of administrative responsibility to the entities referred to in Art. 15 CAO because the rules CAO point to substitute administrative proceedings disciplinary and rules of disciplinary regulations on the procedure and rules of imposition and application of disciplinary or involve disciplinary responsibility for administrative violations or forced to turn to the rules CAO, and only disciplinary regulations of the Armed Forces Ukraine agreed in part with the norms of Administrative Law, particularly Article. 15 CAO.

In our opinion, substitute administrative responsibility for certain disciplinary officials should have certain reservations, namely: 1) committing an administrative offense in the performance of official duties; 2) prediction of the possibility of disciplinary just for putting a certain list of administrative offenses; 3) inadmissibility in this case the use of several types of legal liability for the same offense (administrative and disciplinary), subject to a substitute administrative responsibility. At the same time, in our view, apply to the categories of persons referred to in Art. 15 CAO, substitute liability in case of administrative offenses outside the official should not be tolerated.

Artem Yanchuk

SCIENTIFIC-NORMATIVE APPROACHES TO DEFINING THE NOTION OF «LAW ENFORCEMENT AUTHORITIES» UNDER CONDITIONS OF THEIR REFORMING

The analysis of legal system of Ukraine certifies that law enforcement authorities are not united into the uniform system, their status, tasks, functions are not balanced; they depend on different level of law regulation of public relations in the appropriate sphere. Review of previous attempts of reforming law enforcement system of Ukraine and some other countries gives ground to state that successful reforming of law enforcement authorities needs modern developed scientific-theoretical basis which is the ground for development of corresponding documents of strategic planning of reforming (the concept, strategy, etc.) and corresponding organization-legal provision of the process.

The current legislation of Ukraine does not specify the definition of such important terms as law enforcement authorities, law enforcement activity, law enforcement functions and law enforcement service. The full list of law enforcement authorities is not defined legally. Different legal acts define the notion and list of law enforcement authorities in different ways. The absence of legal regulations of the main definitions, namely law enforcement authorities, law enforcement functions, law enforcement activity are the basis for legal collisions.

Scientific views for defining «law enforcement authorities», «law enforcement service» and «law enforcement activity» are not reflected in legislative activity.

General and, what is very important, specific features of law enforcement authorities, the main aim of their activity (what for they are created), their differences from secret service are not legally defined.

In our opinion specific characteristic features of law enforcement authorities are:

- availability of defined investigative jurisdiction for law enforcement authority or their absence (then law enforcement authority does not have the right to conduct pre-trial investigations);
- order of appointing (selecting) the head of law enforcement authority, his deputies;
- requirements for the report of law enforcement authority Head;
- individual tasks for every law enforcement authority;
- organization structure and number;
- legally defined law to conduct operatively-search activity or intelligence operation or counterintelligence operation;
- activity of certain subdivisions of law enforcement authority are subject to other laws, etc.

The aim of law enforcement activity have to be:

- prevention;
- finding;
- termination;
- revelation;
- investigating crimes relating to law enforcement authority competence.

In our opinion «law enforcement authority» is a state authority that acts against crime, takes measures to prevent, reveal and terminate crimes and also administrative violations within its competence and bring those responsible to justice, set by law, by crime detection, conduct pre-trial investigation of criminal cases and administrative violation cases, find and remove reasons of crimes and other law violations.

We think expedient to initiate formation of a subgroup which will work out a separate part of Constitution of «National Security of Ukraine». From our point of view it is necessary to consider law enforcement system of Ukraine as a constituent of national security of the state which provides safety and protection to the citizens, society and state interests from inner wrongful infringement having the right to limit certain constitutional rights of citizens.

The main parts of forming the basis of modern regulatory and legal provision of reforming a law enforcement system of Ukraine are making changes in Constitution of Ukraine and pass a basic law of Ukraine «About law enforcement activity, law enforcement authorities and law enforcement service in Ukraine» which have to be worked out based on the Concept of reforming the law enforcement authorities and changes made by Cabinet of Ministers of Ukraine to Verkhovna Rada of Ukraine.

We believe that it is essential to define legally such terms as «law enforcement authorities», «law enforcement activity», «law enforcement service», «secret services», «functions of law enforcement authorities» and the content of these notions have to be defined by leading Ukrainian scientists within

the forming the theory of law enforcement activity. It is possible provided subjects of legislative initiative and representatives of leading Ukrainian scientific schools in law sphere join together their efforts when scientifically based definitions in laws are provided.

To solve the problem of legislative definition of the above definitions we think expedient to create an interdepartmental working group with involving the representatives of subjects of legislative initiative and representatives of law scientific schools and to work out a draft law of Ukraine «About law enforcement activity, law enforcement authorities and law enforcement service in Ukraine» based on Legislation Institute of Verkhovna Rada of Ukraine and provide the corresponding proposals to Constitution commission in regard to making changes in Constitution of Ukraine concerning law enforcement authorities of the state.

International Law

Boris Babin,
Eduard Pleshko

LEGAL REGIME OF TEMPORARY OCCUPIED TERRITORY OF UKRAINE IN BLACK AND AZOV SEAS AND IN KERCH STRAIT

The article deals with the specific legal regime and the determining of limits of the temporary occupied territory of Ukraine in its maritime spaces – for the internal waters, internal historic waters and territorial sea, as well as for such legal regime implementing for the exclusive economic zone and continental shelf of Ukraine. Authors specified on the duty to take the urgent legal and organizational measures for the improvement of such regime to counter the escalation of the continuous Russia's aggression against Ukraine.

Limits of occupied territories in global practice commonly are defined by de-facto situations, grounded on control by parties of conflict and as usual are not the same or connected with the administrative boundaries. Additionally the cease-fire agreements adopted between parties also as the refraction the situation in the national legislations are important for such determining. IV Geneva convention as any other binding act of international humanitarian law does not determine the specialties of the occupied maritime spaces (aquatorias). San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 1994 does not use the category «occupied waters» but regards to «neutral waters» and «international waters» recognizing the right of conflict party (belligerent) to establish zones that are able to make negative influence to the legal usage of certain maritime areas.

Ukrainian Law «On Providing the Rights and Freedoms of Citizens and Legal Regime on Temporary Occupied Territory of Ukraine», 2014 named as occupied territories:

- the internal waters and territorial sea of Ukraine adjacent to the Crimean Peninsula;
- the territory of the adjacent area, exclusive economic zone, and continental shelf along the coast of the Crimean Peninsula, which are subject to the jurisdiction of Ukraine according to the international law;
- the underwater space within the Ukrainian territorial sea and the airspace up to it.

Aggressor state after the illegal annexation of Crimea regards the territorial sea and internal waters around peninsula as own territories; also it names the parts of Ukrainian exclusive economic zone and continental shelf as Russian ones. As the orders of determination of wide and lines of such spaces in Ukrainian and Russian legislation are quite the same, with grounding on the UN Convention On the Law of the Sea, 1982, both states determines in common the same territorial sea and internal waters specularly as «own» (Russia) or «occupied» (Ukraine).

But those positions do not foresee the possibility of official bilateral process and do not solve the issues of limitation between the «own» (Russia) or «occupied» (Ukraine) and «Ukrainian» (Russia) or «non-occupied» (Ukraine) maritime spaces. It is also actual for Ukrainian territorial sea in Karkinit Bay and for Ukrainian exclusive economic zone and continental shelf between Crimea and Romanian ones. Also the land points of occupied territory limits are uncertain after the temporal occupation by Russia in 2014 some frontier spaces of Kherson Region linked to Crimea, such as Chonhar and Ad peninsulas in Sivash Bay and Arabatskaya Strelka peninsula between the Azov Sea and Sivash.

More issues are connected with limitation the occupied and non-occupied parts of Azov Sea as internal historic waters of Ukraine and Russia according to bilateral Treaty «On the Cooperation in Usage the Azov Sea», 2010 that is still recognized by both parties. Absence of recognized on-water boarder line before the conflict and problem of uncertain line of occupied zone on Arabatskaya Strelka were added, after the Minsk cease-fire negotiations and agreements, by the problem of water laying to the Ukrainian shore in Donetsk Region occupied by Russia and controlled by it via the puppet «Donetsk Peoples' Republic». As any point of ceasefire agreements give us nothing about the regime and duties of such waters, so the future provocations in hybrid war conditions are possible, as by Russian naval and border ships so by illegal usage of armed cargo and fishing vessels.

ECONOMICS

Sergiy Shcherbyna

INSTITUTIONAL TRANSFORMATION OF THE PUBLIC REGULATION MECHANISM FOR AGRICULTURAL AND RURAL DEVELOPMENT IN UKRAINE

The article rises some important issues in the sphere of public regulation aimed on determining rural development goals and trends of interconnected agricultural and rural development. The author highlights social and economic transformations in agrarian sector of Ukraine. The mechanism of effective agricultural and rural development in Ukraine was investigated using the analyses and synthesis methods. The public regulation instruments in the sphere of land relations and tax system were highlighted.

The analysis of economic reforms in Ukraine gave reason to identify such forward-looking direction in the effective institutionalization of the public regulation, including harmonization of the legal framework and institutions at different levels to each other. The necessity to use public-efficient means of agricultural sector reforming based on large-scale educational program aimed to describe new rules and how they can be applied. There is a need to ensure a positive experience of its implementation and based on this formation build to trust in public authorities.

The author indicates prerequisites for effective public regulation based on consistent and transparent conduct of the governing body and its institutional adequacy. There is a need for inadmissibility of double standards and discrimination of economic entities by the authority. And this transformation requires mechanisms to ensure public participation in the implementation of reforms and maintaining feedback between different levels of the government and public. Therefore, the authorities should organize and maintain constant relations with community councils (agrarian stewardship associations), which include not only representatives of large and medium agricultural business, which mainly use them to lobby their narrow corporate interests, but also representatives of rural communities, experts, scholars and activists of civil society.

The theoretical background of the land reform in Ukraine was investigated to determine possibility of public regulation mechanism to impose market restrictions to own or use agricultural land in each stage of the reforming. The restrictions of such kind include a ban on the possession of agricultural land to foreigners and foreign legal entities, territorial restrictions (prohibition of ownership of agricultural land in certain regions and border areas), limited area of land owned by one corporation, the widespread introduction of the institute pre-emptive rights, size restrictions of land ownership.

The Ukraine's agricultural complex institution infrastructure was analyzed as a unity of kinds of activities, organization, legal and economic relations, which provides functioning, interaction and regulation of the agricultural sector of economics elements through commodity, financial and information flows. The electronic administrative services to the rural community inhabitants were offered. The role of Agrarian Policy and Food Ministry was described in provision of rural development.

The necessity to carry out a comprehensive audit of approaches to rural and agricultural development was proved. This step is aimed to formulate a coherent and understandable concept of public regulation taking into account accommodation of differences in agricultural and rural development. The author highlighted the situation that rural development should not be ignored again, as has happened in recent years when the priority was given to growth in agricultural production through state support primarily of the large scale farms. The mechanism of reforming was formulated, where in the center should be the prosperity of simple rural inhabitant as the main aim of the new state policy of Ukraine in agriculture.

In order to improve the efficiency of the public agrarian policy it is recommended to create independent public institutions, responsible for the formation and implementation of the policy using the principle of checks and balances. Therefore, formation and implementation (primarily the financing of the government support programs) should be carried out by separate independent agencies. This institutional change will help to minimize the participant conflicts of interests in the political process and is recommended following the example of Poland's policy.

On the bases of the improved research methodology in the sphere of interconnected agricultural and rural development in Ukraine the practical recommendations that can serve as a scientific basis for the formation of public policy measures, and programs were formulated. The necessary reforms for the long-term development of agrarian sphere, which are government agencies and academic institutions of economic and agrarian elevation, should be conducted. Proposed mechanism of agricultural and rural development provides opportunity to use theoretical and methodological findings in the process of public regulation with an aim to increase the production and marketing volume of agricultural products as in the internal and external markets and to increase income and employment of rural inhabitants.

The theoretical basis and principles of rural development were determined in order to identify tools and mechanisms for regulatory public influence and implementation process. It is proved that the objective processes of agricultural and rural development require active intervention of the public authority based on the unity of economic and social interests of society. Further research should be focused on necessity to carry out a comprehensive evaluation of approaches to public regulation and formulate a coherent and understandable concept of agrarian and rural development. This task can be formulated on the basis of coordination of the agricultural growth goals and solving the problems of the rural population. Therefore, it is necessary to develop a common policy documents and on this basis to systematize and reform the legislative provision of a coherent agricultural and rural development, aimed to support and encourage the development of rural communities.