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# CURRENT PROBLEMS OF STATE AND LAW

*Collection of research papers*

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The present collection of scientific papers considers problems of modern jurisprudence in the context of sustainable development of state institutions and certain areas of law. Most published researches are carried out by scholars of National University "Odessa Law Academy" within such fundamental and applied topics as "Development and improvement of existing legislation to strengthen human rights protection potential of courts, prosecutors and other law enforcement agencies", "Organizational and legal framework for state support of marine economy of Ukraine",

"Methodological basis for improvement of the civil legislation of Ukraine", "Complex research of evidence-based activity of the court (judge) in criminal procedure of Ukraine", "Innovational and organizational legal mechanism of creation and operation of communal shipping companies in Ukraine".

The collection is intended for scholars, lawyers, postgraduate students and students who are engaged in this issue.



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Chapter 1

# CURRENT ISSUES AND RIGHTS OF STATEHOOD AND LAW

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## ADMINISTRATIVE LAW SUIT AS THE ADMINISTRATIVE LAW CATEGORY

In the article there are analyzed different approaches to the definition of the essence and term of the "administrative law suit" as the administrative law category. The attention is accented on three approaches in the definition of the essence of that term: 1) should be defined separately in procedural (applied to the court demand about defense of the violated right, freedom or legal interest) and material (material-legal demand of the plaintiff to the respondent) meaning; 2) has entire nature that reflect the organic junction of two sides (material-legal and procedural); 3) is the procedural institute as application to the administrative court about defense of the violated rights, freedoms, legal interest or realization of competence in the sphere of public-legal relations.

Thus, based on the analyzed approaches can bring an understanding of the legal category of "administrative action", addressed through administrative court the substantive requirement plaintiff to the defendant to protect the rights, freedoms, interests or exercise of powers in the field of public relations by addressing a public law dispute on the basis of equality and adversarial.

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## ACTUAL ISSUES OF INTERACTION OF THE STATE AND LOCAL SELF-GOVERNMENT IN THE PROCESS OF IMPLEMENTATION OF SOCIAL RIGHTS

The article is devoted to the nature of interaction of state and municipal authorities in the context of social rights, which will contribute, on the one hand, the implementation of basic social functions of local government, on the other – the main areas of social policy at the appropriate local level.

The author proves the necessity of building a fundamentally different in nature relationships between state and local governments, the transition should take place, depending on the model of local government from the executive to the partnership model.

Analyzes the current legislation, the bill amending the Constitution is in the reform of public authorities in the field, restoration institute representatives of the President at the regional level and practices of countries with decentralized unitary state structure.

Particular attention is paid on the interaction between local government and state executive power is in terms of material – the financial component of the mechanism of realization of social rights.

Emphasising the need for expanding the list of its own powers of local self-government through delegated by the state executive bodies, changing the organizational structure at the level of regional self-government through the creation of executive agencies and the strengthening of the material – the financial heart of the system of local government. That is what will allow local communities and their representative bodies created by more effectively than government agencies to solve local problems, improve the level and quality of life of the inhabitants of the areas, thus ensure social, public – domestic and other essential needs. Thus the basic principles of effective cooperation between the state and local governments in the implementation of social rights should be, above all, partnership, subsidiarity, organizational and financial autonomy of local governments.

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## THE CONCEPT OF LEGAL SPACE: PHILOSOPHICAL AND LEGAL INTERPRETATION

In this article analyzes the existing interpretations of the term “legal space”, and attempt a philosophical and legal interpretation of the term “legal space” filling it with content by using philosophical methodology.

Today there is a need in developing a holistic concept of legal space. Interpreting the notion of space as a whole, it is appropriate to take legal space as the fundamental structure of reality as to coordinate legal, social, economic, cultural and political events in the objective reality of the material world.

In the legal literature, which focuses on interpretation of the term “legal space” prevailing positivist interpretation of it, the desire to discover the conceptual distinction. Moving away from the traditional, positivist interpretation, based on the familiar framework and seeking new interpretations of the concept of “legal space” can be defined as a coherent set of legal phenomena, actions and events, communications and relationships due to objective laws of the development of mankind consciously and constantly being played by people and their associations that they use to achieve their goals, implement claims.

The volume and content should differentiate the legal space of individuals, society and the state, but a detailed definition of the nature, volume and limits their characteristic sound requires further deep research, which will be an important basis for the conceptualization of the term “legal space”.

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## METHODS OF ANTHROPOLOGY OF LAW (TO THE PROBLEM OF APPLICATION OF THE METHODOLOGY OF SOCIAL SCIENCE)

The potential of a lawyer anthropologist learning methods used today in the social and behavioral sciences, including sociology (the method of participant observation, biographical method, monographic method of describing a single event, the method of observation and others), to identify the defining values, meanings and values.

Anthropologists observe life, social relations and cooperation, customs and traditions of the peoples, tribes, communities. Observation method is also used by sociologists, psychologists, economists, ethnographers, political scientists, cultural and representatives of social sciences. The observation remains the main method of data collection, which involves collecting primary information and registration. This careful observation of the events taking place, their correct perception and fixation.

Finally, we should also mention the method of visual anthropology – displaying information in visual form different cultures using modern means (film, photo, video equipment, computer technology). Visual Anthropology, whose task is to show through modern media the real state of various cultures, especially endangered and lesser-known, helps create a more complete and objective picture of humanitarian international community.

Considered sociological research methods, which are empirical, can provide substantial assistance in identifying exactly sociocultural conditionality of law, understanding it as a unique social phenomenon.

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## "OLD" AND THE NEW INSTITUTIONALISM IN THE STUDY LEGAL INSTITUTES

Today institutionalism – one of the leading trends in contemporary Ukrainian economic thought. Instead, the authors of study the legal sciences investigate and used institutional approach is not enough. Today there is no proper amount of comprehensive legal studies that allows you to discover and to improve the institutional approach to law.

Important elements of the institutional approach to law and economics can be found in the work of sociologist Veblen, a lawyer and economist R. Lee Hale and W. H. Hamilton and jurists K.Levellin, Dzh.Franka, P.Rosko. It should be noted that the institutional approach evolve, developed certain stages, and now exists in a variety of institutional concepts: the traditional "old" institutionalism became the new institutional economics and has appeared neoinstytutsionalizm. This paper substantiates that they can not be used interchangeably.

Institutional approach to the study legal institutes must take into account the hierarchical levels of study. It is proposed that scientific legal research can be conducted at different hierarchical levels depending on the subject of research and interest entities (mega-, macro-, meso-, micro-and nano-level).

The author concludes that approach of neoinstytutsionalizm may be useful in the study legal institutes as rules of conduct ("rules") for each member of society, given the contractual theory of the state and law. However, absolutization of this approach can not be, because the current state law (including theory of law) needs to be updated search for a new approach that could considering all the objective and subjective factors, the essence, the prerequisites of the conditions of legal phenomena and institutes legal reality and to predict the possible changes and transformation. It is therefore necessary take into account the results of studies of other social sciencesin particular political science, philosophy, sociology, etc., which was used by the founders of the "old" institutionalism directly studying institutions.

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## DEONTOLOGICAL HUMAN ACTIVITY IN THE NATURAL AND LEGAL SPACE

Deontological human activity in the natural and legal space depends on the features of the formation of its legal conscience in this space, and this directly affects the legal human behaviour.

The deontological human activity can be both positive (legitimate), and negative (unlawful). Analyzing the causes of unlawful human behaviour, researchers often argue and justify such a kind of behaviour due to the lack of the sufficient social living conditions, i.e. the lack of the practical implementation of social guarantees. Such unambiguous conclusions are not grounded sufficiently, because crimes are committed not only by socially unprotected people, but also by quite socially successful people, and the factor of the social insecurity isn't a measure of unlawful human behavior.

Asserting his dignity a man should not do harm to the surroundings and moreover a man is obliged to take into account the interests of all people and the norms of every-day space. When non-complying with these conditions, there is a question about the natural and legal responsibility for his behaviour. The ability to improve the quality of the moral and legal formation of the person depends on the correct interpretation of this problem, as the ultimate aim of this process is the formation of a person who is aware of the responsibility for his conduct, and his activities are not contrary to the fundamental principles and norms of the natural law.

An important direction to overcoming tendencies of unlawful human activity in the natural and legal space is taking into consideration the contraries of individuals and social groups, the need to settle the arising contradictions between them. The state, through its authorized institutions, should implement and develop flexible social and legal mechanisms of correcting the human activity based on the natural and legal ideas, the ability to make compromises, to find the common interests of all social strata and groups that lead to the birth of common necessity of carrying out the lawful activity, so as a person feels not only support and encouragement for such activities from the state but also moral satisfaction and emotional harmony.

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## UKRAINIANS' EUROPEAN INTEGRATION INTENTIONS THROUGH THE ALEMBIC OF NATION'S LEGAL MENTALITY

In the article there was defined the influence of legal mentality on the process of formation of European integration tendency of Ukrainian foreign policy, there was also studied the legal system through the alembic of legal mentality.

The necessary condition of the Ukraine's European integration is the legislation adaptation to the EU legislation that lies in the legal system reformation and its staged compliance with European standards.

The important value of legal system is emphasized by Yu. Oborotov taking into consideration that in the process of any changes of legal system, law-making activities (rules-making) and enforcement it is necessary to take into consideration the peculiarities of human's nature, mentality. Zh. Karbonie confirmed the mental mechanism of creation and perceiving of jurisdictional. A.Krister wrote about the genetically-mental basis of law-making process formation as the component of legal system.

Thus the legal system is closely connected with inner world of every people. Herewith as it was noted by M. Miroshnychenko just "the mental meaningfulness of this inner world has a great influence on the mechanisms of organization and self-organization in the society".

The belonging of Ukraine to the western (European) way of development is proved in particular by the historians, sociologists and this thought is established in the modern local science.

Today there exist the view according to which Ukraine first of all has entered the European spiritual space starting with the Kyiv Rus times and polish-lithuanian age but the Pereiaslav rada and the breaking of its regulations "has pulled out" Ukraine from the European context and has fastened to another civilization that influenced the legal mentality of Ukrainian people. R. Dodonov agrees with such statement confirming the mental similarity and consonance of European and Ukrainian people. At the same time he stresses the necessity of liberation from the illusions connected with the rate of their complete mental identity formation. As the existence of such "consonance" does not give rise to the thesis about quick rejection of the characteristics inherited from the Russian mentality. Imperial and then Soviet era of the Ukrainian history had an influence on Ukrainian people mentality.

The perspectives of Ukrainian integration with politically-legal European field do not threaten with the loss of mentally-legal "face" and on the contrary contribute to the transformation of Ukrainian people's legal mentality into the higher legal standards than the eastern ones.

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## THE CONCEPT OF THE BILL AND ITS IMPLICATIONS FOR IMPROVE THE QUALITY OF LAWS

The object of study of the article is the concept of the bill as one of the main requirements for registration law.

Since the effectiveness of a particular law depends on various factors – both internal, arising from the law, and external, arising from the conditions in which the law will be implemented. The most important of all these factors is the quality of the concept of law as a false concept of law can not only lead to the expected result of normative legal regulation of specific social relations, but most lead to negative consequences, unlike, for example, deficiencies in the law. Obviously, the task of achieving signs should be provided as the law in different directions at the stage of its development.

This paper analyzes the concept of the bill and its implications for improving the quality of legislation defining the range of the main elements of the concept of the bill provides new and possible ways to improve training concepts as the bill during the legislative process. Also, the author said that one reason for the lack of quality of laws is to ignore their need prior training concept is to improve the quality of laws is the most effective approach, in recognition that the scientific concept of development is a fundamental prerequisite for the preparation of laws.

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## PROBLEM UNDERSTANDING FEATURES AND PRINCIPLES OF UKRAINIAN LAW

Problems of formation and allocation of areas of law are still relevant. We believe that the debate about the field of law, its place in the law, and the signs and principles of right field for a long time will attract the attention of researchers. Out of this situation, in our opinion, is the scientific substantiation of the essential features of the industry as part of the system, while identifying where in a particular set of legal rules could undoubtedly determine its type and sectoral affiliation. In this regard, the establishment and substantiation of quality properties, characteristics field of law should recognize the important task of science because it allows not only better understand the nature and diversity of the phenomenon, but also to show the relationship of parts and the whole, the various elements of the legal system, their internal structure and features, to typology, species and provide substantive response.

The principles of law, evolving, changing areas of law and the maintenance of most areas of law in general, contribute to the formation of new branches of law. It is from the point of view of evolutionary processes principles of law should be seen as a sign of law.

The proposed classification of signs does not claim to completeness. The process of separation may be extended. It is important to bear in mind that the signs as part of the field of law systems provide expression of its essence, content, external form and internal structure, place and role in the overall set of legal education and the mechanism of legal regulation. Thanks to the features of each branch of law has contributed to the establishment of the rule of law and the formation of legal awareness of the whole society and every person in creation of reliable mechanisms to protect the rights and interests of the individual.

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## KHELMNO ZEMSKE AND KHELMNO RURAL LAW

At this stage of the historical development of our country, the importance of research of the history of Ukrainian statehood and law is growing. First of all it concerns the historical and legal issues, all of which were pre-paid little attention, in particular the issue of medieval law. And despite the fact that Khelmno law (one of the varieties of municipal law of the Middle Ages) played a certain role in the state-legal development of the Ukrainian nation, as on its basis in the XIV-XIX centuries self-government of Ukrainian towns and villages (in Pidliashshia and Volyn) was carried out and was one of the sources of codification of Ukrainian law in the XVIII – early XIX century.

Khelmno charter (1233) became the basis for the creation of not only khelmno municipal but also khelmno zemske and khelmno rural law. Khelmno charter not only self-regulated Torun and Chelmno cities, many of its norms determined the relationship between the inhabitants of Prussia and the Teutonic Order. It mostly concerned relations between the Teutonic Knights and dependent peasantry. Besides, Khelmno charter regulated legal status of colonists(settlers) who migrated to the territory of the Teutonic Order. In particular, in article IV of Khelmno charter application of norms of the Magdeburg law was envisaged in relation to colonists who transmigrated on territory of Prussia, though with some changes in relation to the rights of inheritance of women and widows. These changes concerned the use of norms of the Flemish law in this matter.

Khelmno charter also regulated the issue of granting of plots of land, fishing, mining of nonferrous metals. Mining of nonferrous metals was established on the basis of Freiburg law (one of the types of German law).

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## COMPARATIVE ANALYSIS OF THE JURISDICTION OF THE CAPITAL OF UKRAINE AND EUROPEAN CAPITALS

The article is given by the question of the jurisdiction of the capital of Ukraine and European capitals. The author argues the thesis that the jurisdiction of the capital cities of European countries are viewed through the competence of municipalities that operate in their territory. The competence of local authorities can be divided into the following groups of powers: in the area of financial and economic activities (local budget adoption, participation in economic and social projects through the issuance or purchase of shares, collecting various financial assets, their accumulation), in the field of public order, in the area of public services, improvement and environmental protection (development of transport, local road construction, sanitary condition of cities, pollution of water, air), in the social sphere (helping the poor, elderly, disabled people, medical care, nursing homes, for people who need special care, in some countries, local authorities are engaged in the construction of affordable housing, which is then sold on preferential terms).

However, with regard to the structure of local government executive office, it usually involves different departments, divisions, offices and so on. There are functional and sectoral departments in the structure of local government executive office of the capital cities of European countries.

At the same time important in this respect is the distribution of functions and responsibilities between the central and municipal authorities, which is ongoing conflict. There are three models of the distribution of functions and responsibilities between the central and municipal authorities: The relative autonomy model (Scandinavia), Representative model (Western Europe) and The model of interaction (typical UK).

Also, the author provided the main trends of functioning of municipal government in the capitals of the European countries.

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**COMPARATIVE LEGAL RESEARCH OF DISMISSAL FOR IMMORAL ACT**

In this article the author pays attention to some ambiguous questions of dismissal for the commitment of an immoral act.

Based on detailed survey of the Labor Code of Ukraine § 3 p.1 art. 41 the author compares corresponding regulations of foreign countries, makes attempt of source searching and nature determination of the mentioned rules and regulations. Through the comparative analysis of an applicable national and foreign legislation, the author establishes effective solutions for adjustment legal relations of employer-initiated dismissal because of employee guilt actions.

During research the author of the article comes to the conclusion that entities circle which the regulation of the Labor Code of Ukraine § 3 p.1 art. 41 applies to was qualified unjustifiably. As a consequence the author suggests to enlarge entities circle which could be dismissed because of an immoral act.

In the article the author studies the problem of difference between immoral and disciplinary acts, which gives him the ground for further scientific research in this area.

The author focuses on the complications that appear during the process of practical application of judgment-based standards; she marks inevitable subjective approach during the court procedure process in assessment making about legalness of dismissal for the commitment of an immoral act; she also studies similar foreign legislative and judicial experience. According to comparative legal analysis and conclusions made, the author of this article suggests to introduce some innovations in Ukrainian Labor law, which upon her help to better understand and apply legal norms within the area in question.

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## FEATURES OF LEGAL SOCIALIZATION OF MINORS

The article deals with the features of socialization of minors. The actuality of the problem lies in the fact that modern development of international and internal national legal reality is characterized by a number of unsolved problems, particularly the legal status, the rights' and freedom protection of special categories of the subjects of law. They include minors, since they are the most sensitive category of the society. It needs the creation of peculiar conditions for overcoming crisis social, geopolitical, economic, cultural transformational deformations, since the minors do not possess steady social habits. The goal of legal policy of the state and the activity of public society is to provide harmonic adequate and the development of future generation that requires immediate provision of necessary conditions for future high level of legal culture of minors and their harmonic development, adaptation in the society.

The article emphasizes on the futurological aspect of the problem that is revealed through legal socialization of minors as a future category of the community.

The structure of the article consists of the scientific study of the concept of socialization as a legal phenomenon, and further manifestation of peculiarities of legal socialization of minors on the basis of the inductive methodological analysis.

Socialization is described by the author not as the process of entering the individual into the society, but also as the process of acquiring some qualities by this person needed for vital activity in the society that includes both biological prerequisites and direct entry of an individual into the social environment that provides for: social perception, social communication, acquiring the habits of practical activity.

In the conclusion the author singles out special characteristic features of legal socialization of minors, e.g.: moral-psychological, individual-age identyteties of minors as social individuals are primary factors of their legal socialization; legal socialization acts as the necessary primary process of legal nature of the development of an individual, the primary process of legal adaptation: bilateral, the non-parity process with the dominating role of the institutional state and social bodies, but not individually-minor ones ; legal knowledge of minors as an element of socialization appears to be superficial, fragmentary, unformed and are of abstract character, obtained usually from unprofessional, mundane and social sources; lack of acquiring habits in full measure, social experience in realizing legal norms, impossibility to a full extent to put legal knowledge into force individually; legal socialization of minors is not recognized as a unified system and dominantly operates as a process, but not an absolute prefect result; a family appears in the role of the main institution of socialization of minors; there exists an mediate perception of recognizing legal information, norms and values, and a direct connection with legal reality takes place more seldom then with adults as subjects of law; for this category legal socialization is unstable, unsettled and changeable.

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## HISTORICAL AND LEGAL ASPECTS REGARDING FORMATION OF VIEWS ON THE PURPOSE OF PENAL CRIMINAL LEGISLATION IN UKRAINE

The term of objective of legislation in the etymological and legal aspects is considered in the article. With regard to the last aspect it was concluded the term of "target" is mainly used in Law to determine the purpose of specific laws and other legal acts as a true definition of the purpose of legislation as a whole and its individual legal norms is a benchmark of their efficiency. The author pays attention to the point that the essence of determining the degree of effectiveness of the legal norms means to compare marked purpose and actual results are achieved by these norms.

It was also considered the history of mapping purpose of penal criminal legislation in the international legal acts and acts of individual countries taking into consideration period since 1955. In the context of investigated problems special attention was paid to the legal acts and legal doctrine of the USSR.

Based on the above it is concluded the purpose of penal criminal legislation is the convict emendation, their resocialization and prevention of new crimes by prisoners and others. The author emphasizes the convict emendation and resocialization are considered as the main law guidelines for implementation of criminal penalties and represent the complex psychological, educational, social and legal categories. As one of the components of the goal of penal criminal legislation is prevention of new crimes by convicts and others.

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## FEATURES OF THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW IN PEACEKEEPING AND SECURITY OPERATIONS

The article investigates the features of applying international humanitarian law to peace operations and security. The author analyzes the problems of application of international humanitarian law in peacekeeping operations today. It is noted that peacekeeping and security has recently become numerous and multi-acquired and multifunctional nature. Beginning in the late years of the 20th century peacekeeping forces were increasingly interfering in the internal armed conflict that was characterized by a high degree of violence and widespread gross violations of international law. Thus the distinction between peacekeeping and enforcement shares was soon completely blurred. The problem of international legal protection of UN personnel participating in armed conflict becomes relevant.

The authors propose an approach to the classification of peacekeeping operations made it possible to determine the status of UN personnel from the standpoint of international humanitarian law and showed its dependence on the nature of the operations conducted by the UN. Armed UN personnel equate to combatants in the following cases: 1) during the operation to enforce peace based on Security Council under Chapter VII of the UN Charter; 2) during peacekeeping operations, provided that the application of enforcement measures authorized by the Security Council will take a long-term and large-scale nature.

The subject of careful consideration by the author became the UN Secretary-General's bulletin 1999 on respect for international humanitarian law by the United Nations. According to the author, it has become unprecedented in its content document that put an end to doubts about the applicability of international humanitarian law to the operations carried out under the command and control of the UN.

Furthermore the author emphasizes that the regulatory status of the UN force is not fixed in some documents, so it seems appropriate, the provisions on the status of UN personnel in the set of rules of the law of armed conflict.

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## REGULATORY OBSTACLES TO VENTURE CAPITAL FUNDRAISING: A COMPARATIVE STUDY OF UKRAINE, THE EU AND THE USA

Access to finance is essential for the growth of venture funds (VFs). The problem of VC fundraising became even more acute after the financial crisis of 2008 and the ongoing political crisis when a significant reduction of investment allocations to VFs was noticed. But Ukrainian legislation contains a range of regulatory obstacles for equity financing, namely, institutional investor allocations to VFs and thereby makes inflow of capital even more challenging.

The impetuous growth of VC industry and uneven distribution of VC flows in different countries caused scholars' interest in the determinants of VC fundraising. This article adds to the strand of literature and investigates justification for restrictions imposed on Ukrainian institutional investor allocations to VFs, focusing on the comparison with the EU and US regulations. I offer a more efficient regulation of VC investments in Ukraine.

This article consists from three parts. Firstly, I give a foundational overview of VF investors and legal obstacles to their investments in Ukraine. I also analyze how legislation changed VC fundraising in Ukraine and its impact on the structure of VF investors. I find that current restrictions imposed on institutional investor allocations to VFs are predetermined mainly historical rather than economical determinants. They are too costly and obsolete and should be revisited.

Then I analyze similar regulations in the EU and the U.S. (countries with the most developed and mature venture capital markets in the world), and their distinction from the Ukrainian one. I consider the structure of VF investors in the EU and USA, motivation for such regulations, determinants which caused the growth of VC market. I evaluate the recent post-crisis financial reforms in both the EU and the USA regarding VC fundraising and make some suggestions for the Ukrainian regulator.

This permits me to put forward a new approach to regulating of Ukrainian institutional investor allocations, pursuing the enhancing of VC fundraising. I suggest a significant liberalization of restrictions imposed on institutional investor allocations to VFs with simultaneous establishment of supervision of the authorized governmental agencies for such investments. I emphasize the role of trust and reputation for VC fundraising and propose development of the best practices and standards by VC self-regulatory organization.

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**INTERNATIONAL CUSTOM LAWMAKING: SOME ASPECTS**

The article is dedicated to some international custom lawmaking aspects. The biggest problem of such a study is the absence of a clear and precise international lawmaking notion. The reflections on its definition are outlined. The author tries to describe some characteristics of the international lawmaking in connection with them. In this process it's cleared that there is no unique understanding of the international lawmaking concept as far as it can be comprehend in the broader and in the stricter senses. Obviously there are different characteristics of the lawmaking in this case. Considering it the analysis of stages and subjects of international custom lawmaking is done.

The sovereign state remains the main subject of international lawmaking but in many cases there are other international law subjects to participate in the international lawmaking process. The role of the international governmental organizations is notably increased. But the process of extension of the international lawmaking subjects' range is going on. There are some signs of the process in the case of the international custom making.

In the paper the author emphasized on the different approaches to the international custom lawmaking stages distinction in the connection with different understandings of two principal elements of a custom "objective" (practice) and "subjective" (opinio juris). As far as some authors recognize the key role of the practice for the international custom formation and some others the same role of the opinio juris, in this case we can talk about one stage lawmaking. But a common idea is to understand the international custom lawmaking process as a process of two main stages the stage when the general uniform lasting practice of behavior is formed by international actors and the stage when the lawmaking subjects show their opinio juris sive necessitates and doing so create a new international custom norm.

The author also paid attention to the issue of so called "instant" customs. Their recognition could lead the international law to the great theoretical and practical changes. In the author's opinion the time factor is a valid one for the formation of a custom so we can not talk about an instant custom formation based on the opinio juris only.

This one and others questions of the international custom lawmaking touched in the article require the deeper scientific researches to avoid the growth of international disputes on the subject.

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## RATIO OF LAW AND LEGAL SYSTEMS

Under the system of law means a system of normative legal acts, which is inherent in unity and that includes how laws and adopted regulations for their implementation regulations. For legal system, as opposed to the legal system, "doubling" structure by providing integrated industries it remains debatable inherent in the presence of a number of structural elements and horizontal structure, which includes complex area of law. This approach facilitates compliance as required for science "concepts of purity" and describe the current state of law and legislation and prospects of their development. Such conceptual vision of the structural part of the system of Ukrainian legislation allows, in our view, with high probability to characterize complex and ambiguous phenomenon, which is the integration right. To characterize the latter we will use the term "complex area of law," which is used to describe separate sets of regulatory legal acts containing norms of several branches of law, combined with the unity of the subject, ie, regulating qualitatively similar public relations, subordinate only principles.

The system of law can be represented hierarchically. Thus, depending on the legal force of normative legal acts in the legal system are the following elements: the Constitution of Ukraine, laws and regulations. If the basis is the principle of industry, the legal system can distinguish an element such as a branch of law that fully matches the available types of areas of law. If the basis is the subject of legal regulation, then legislation branch will be a set of regulations containing rules of law relating to the various branches of law.

If you use a sectoral approach in determining the legal system, we can distinguish its elements are: 1) the field of law; 2) institutions of law; 3) normative legal act. Industry sector legislation coincides with the law. For example, selecting in the law constitutional law, we hereby confirm that there is also a constitutional law.

If the basis is not a sectoral approach, where the important criteria is the subject and method of legal regulation, but only the scope of implementation of the regulations (ie only the subject of legal regulation), the system of law can be represented as a set of complex groups.

Chapter 2

# CONTEMPORARY PROBLEMS OF ADMINISTRATIVE AND FINANCIAL LAW

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## CODE AS A SOURCE OF ADMINISTRATIVE PROCEDURAL LAW OF UKRAINE: DEVELOPMENT PRIORITIES IN MODERN LAW-MAKING PROCESSES

Updating of administrative legislation in modern conditions a radical revision of the spirit and purpose of administrative law of Ukraine, external forms of its existence essentially actualize the need for development and adoption of the Administrative Procedural Code. This code should combine all the rules governing administrative and procedural relationship. These norms are today fixed in a large number of legislative and regulatory acts, which complicates their use. Codification of administrative and procedural rules will simplify the legislation will promote certainty in the regulation of the respective relations; strengthen the role of control in this area over the implementation and protection of the rights and interests of persons in relationships subjects of public administration. Administrative and procedural code is proposed as a source of administrative law in Ukraine, which is inherent specificity – the name, subsector nature, scope control, etc. Administrative law of procedure proposed as sub-sector administrative law and legislation – subsector of administrative legislation. In developing (The article analyzes the existing Code projects and noted protracted time practice their discussion), and administrative and procedural code of Ukraine is invited to take into account all the scientific developments leading scholars in this field to ensure compliance with the principle of the scientific process of codification. Also needed is a historical record, foreign experience, achieving positive results subsector codification. Attention is paid to the importance of the issue associated with fixing subsector terminology in the Code, demarcate related legal concepts (administrative process, administrative proceedings, an administrative procedure, etc.), the structure of the Code substantiation of necessity of consolidation in its individual sections of the provisions of the different types of administrative procedures. Expediency distinction administrative procedure, administrative and procedural provisions and fixing them in different codified acts. We formulate a conclusion that the adoption of the Code, it will take place leading source of subsector administrative law its inherent characteristics. Attention is given to the advisability of using a balanced approach and international experience relevant subsector codification focus on the priority needs of the domestic rulemaking. Formulate concrete proposals on the content of future Administrative Procedural Code of Ukraine, introduction of changes and additions to the current Ukrainian legislation to codify procedural legislation.

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## THE FUNCTION OF ADMINISTRATIVE LAW: AN UPDATED VIEW OF THE DOCTRINAL TENETS OF VIEW IN TERMS OF THE SYSTEM OF LAW IN UKRAINE

In domestic law theory recently actualized research on modifying the structure of law, namely, new area of law, existing together, delineated, defined as their object system, principles, methods and specific performance. As a result of a radical reform of the legal opinion on the nature of administrative law is undergoing significant change as a system of administrative law in general, and certainly those functions which it is intended to perform in society, as recently in the administrative and legal doctrine had some discussions about the feasibility of separation of certain components of administrative law in a relatively independent branches that will definitely affect its auto industry functions, what it is called to perform. The author analyzes the position of scientists administratyvistiv place on administrative and procedural rules in the system of administrative law, examines the place and role of administrative and tort law as well, given that administrative law is the "skeleton" of public law, the approaches to the theory of functions of law in public areas of law. The feasibility of the concept review functions of law in the private sector was due to the introduction of "service" (service) concept of administrative law.

Based on the analysis of current doctrinal approaches to the essence of the subject of administrative law, its structure and function theory research in public and private areas of the law, the author concluded regarding the definition of "function of administrative law" and outlined its legal characteristics.

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## AN INSTITUTE OF ENCOURAGEMENT AS MECHANISM OF INFLUENCE IS ON A CIVIL SERVANT

In the article terms and principles of application of encouragements are analysed to the civil servants and suggestions are grounded in relation to perfection of them legal adjusting. An author asserts that the state, creating the mechanisms of influence on civil servants, directed on a motive to the proper implementation of duties, can not be limited to only application to the office workers of measures, based on a compulsion, as it conflicts with basic principles of social management within the limits of which in an obligatory order must be used to the proper socialuseful conduct.

Analysing practice of application of encouragements, normative acts in relation to this question and looks of research workers, an author draws conclusion, that due to application of encouragements to the civil servants it is possible to decide such tasks: at first, highly to estimate activity of civil servant; secondly, to stimulate subsequent development of official activity;thirdly, to satisfy the civil servant of advantage of responsible attitude toward implementation of the duties laid on him and realization of the rights given him; fourthly, to improve official discipline.

Recommendations are in addition, given in relation to the improvement of normative base for the proper adjusting of procedures of encouraging process.

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## ENSURING INFORMATION SECURITY IN TERMS OF THE DEVELOPMENT OF INFORMATION SOCIETY IN UKRAINE

Ukraine's transition to a new type society proves the necessity to change approaches to the state defence policy and, therefore, to include therein an information component. The article provides the analysis of the normative and legal regulation of information security in Ukraine and offers the rationale for reforming the state information policy in terms of the development of information society. The importance of the development of information component within the structure of national security is demonstrated on the example of the aggression of Russian Federation against Ukraine.

In order to guarantee and ensure information security Ukraine must first develop a clear state information policy. The growth of global information flows and a significant states' dependence on modern information technologies significantly increases their vulnerability to a variety of information threats, both direct and hidden. In the 21-st century it's highly important for the state to have its own strategy of information security. This problem is of particular significance in the light of the rising number of conflict situations, complicated by cyber element. States are victims of cyber attacks, cyber terrorism, or even get involved into a full-scale information war. In Ukraine, these issues are particularly important in the light of the aggression of the Russian Federation against our country. Ukraine's experience clearly demonstrated that unavailability to information conflict and the absence of cyber potential can have disastrous consequences to the country's sovereignty and territorial integrity.

A large number of issues regarding information policy in Ukraine is still not regulated by law. The negative feature of the legal regulation of information security in Ukraine is the lack of a single comprehensive compulsory act and dispersion of different issues in numerous legal acts of different legal force. Important issues are fixed at the level of by-laws, which indicates that Ukraine until recently was not aware of all the importance of information security.

Another important thing for efficient information security in Ukraine is to guarantee the consistency of legal acts with each other and with the Constitution in force. A characteristic feature of the national information legislation is a large amount of declarative rules.

The conducted analysis proves that today one of the priorities of Ukraine should be a reform of national information policy and information security. It should develop clear mechanisms for combating information aggression that would make Ukraine a potentially strong player in contemporary system of international relations.

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## ANALYSIS OF THE REGULATION OF INTERGOVERNMENTAL TRANSFERS

The article systematizes the formation of acting regulatory methodical ensuring of the legal adjusting of interbudgetary relations in Ukraine and grounds recommendations and suggestions for their perfection with the purpose of achievement of social standards of development of regions and the state on the whole in the context of euro integration process of Ukraine.

The article exposes the essence of the legal adjusting in financial sphere, considers peculiarities of determination and functioning of interbudgetary relations, generalizes regulatory methodical providing of the legal adjusting of interbudgetary relations, gives institutional description of the legal adjusting of interbudgetary relations and gives the analysis of the legal adjusting of interbudgetary transfers.

The article determines certain problems of the legal adjusting, the strengthening of financial autonomy of local self-government, systematized principles of the budgetary system as legal principles of improvement and development of interbudgetary relations, finds out the leading constituents of the legal providing of local self-government financial autonomy, the prospects implementation of the legal adjusting of interbudgetary relations norms in the context of euro integration processes and grounds financially legal relations in the budgetary system of Ukraine.

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## PROBLEMS OF LEGAL REGULATION OF THE BUDGET REVENUES AND EXPENDITURES ARE INCLUDED IN THE BUDGET SYSTEM OF UKRAINE

The article contains some important aspects of understanding of the budget revenues and expenditures, selects problem issues need to be some clarified, provides a series of author's definitions related to fiscal and legal categories.

The recent definitions of the budget revenues need to be improved due to the term of "the budget revenues" is used in Budget code of Ukraine essentially describes the structure of the budget revenues. They are defined as a set of specific budget incomes while such incomes include the budget revenues and are considered as wider concept.

Regarding the budget expenditures the meaning of this term according to the actual legal standards is used in a narrow sense and requires some adjustment.

The author concluded the budget revenues are a part of the budget financial resources which includes taxes, fees and other mandatory payments are flowed to the budget in accordance with the legislation of Ukraine and also transfers (grants, subsidies) that are necessary for the purpose of functions' fulfillment of state and local authorities within the Constitution and laws of Ukraine.

In article the budget expenditures are considered as a part of public spending and as a part of budget costs.

As part of public spending the budget expenditures are the funds accumulated in state and local budgets in order to cover national needs.

As part of budget costs the budget expenditures reflect the means are necessary to carry out the tasks and functions confided on the public authorities, the authorities of the Autonomous Republic of Crimea and local self-government within the Constitution and laws of Ukraine in order to cover social needs.

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## FEATURES INITIATION OF CARRIAGE OF PASSENGERS UKRAINE ACROSS THE STATE BORDER WITHOUT PROPER DOCUMENTS ON INTERNATIONAL PASSENGER SERVICES

Today it is important to establish the legal nature of the proceedings, regulated by the Law of Ukraine "On the liability of carriers on international passenger services" based on comparisons with other norms of legislation to facilitate the definition of procedural powers designed to counteract illegal migration.

That is why research in terms of bringing to justice carriers is urgent and necessary area of scientific research. However, to determine the subject of administrative liability of carriers for the transportation of passengers across the state border of Ukraine without proper documentation on international passenger transport is to determine the appropriate features infringement cases.

In summary, it is necessary to note the specific cases of violation of passenger transportation across the state border of Ukraine without proper documentation when making international passenger traffic. It is associated with the bodies that may violate such cases, and the fact that most persons considered guilty of the offenses are foreign entities. Meanwhile perceived inadequacy of national legislation in this area that requires additional processing and synthesis.

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## THE DISABLED PEOPLE RIGHTS ENFORCEMENT IN EMERGENCY SITUATIONS

Nowadays, the security of the most vulnerable social groups, especially people with disabilities became actual because of the antiterrorist operation in the east of Ukraine. The article is dedicated to the problem of implementation of information suipport, evacuation and humanitarian assistance to people with disabilities.

The article draws attention to certain disadvantages of legal regulations connected with improper settlement of questions concerning evacuation, public notice and humanitarian assistance during the occurrence of threat or emergency situations. The law, which defines the basis of social protection of the disabled people in Ukraine do not contain provisions about the safety and protection of people with disabilities in situations that have caused or may cause a threat to people's life or health, or make it impossible to live in such territory or facility.

A special place in the article is devoted to the organizational problems during filling the critical needs of the disabled people in terms of such kind of situations and evacuation. The formation of special groups within the Ministry of Social Policy for humanitarian assistance to the disabiled and others who require help because of their special insecurity and vulnerability is rationalized.

Attention is drawn to issues of information security, which is an important component of activity in terms of enforcement of the rights of the disabled and other most vulnerable social groups in emergency situations. Obviously, the lack of information support does not allow to realize in full extend the potential capacity of the state to help those who require it. One of the most important components of information support is informing of citizens about the state of situation prevailing in a particular place and notification of people about implementing measures performed to ensure their protection and security, including the evacuation.

Also the article specifies the problem of indetermination of the legal basis for activities of volunteers, who carry humanitarian assistance to citizens during the antiterrorist operation in the east of the country.

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## ANALYSIS OF FOREIGN EXPERIENCE IN ADMINISTRATIVE AND LEGAL REGULATION OF THE RIGHTS OF TAXPAYERS

Article deals with the current topic. Its relevance lies in the fact that administrative and legal regulation today is leading in the collection of taxes, so it is an appropriate level of harmonization are essential private and public financial interests, rights and freedoms, economic development and stability in the society at large. Despite the noticeable development regulation tax field in recent years and the current level begins to lag behind the actual needs that require transfer to partner the relationship between the state and taxpayers, moving the center of gravity towards the voluntary and not strictly enforce tax obligations, streamlining tax administration system, modernizing the tax service as a whole. Tax administration is complex, dispersed organizationally, functionally and legally. According to the World Bank, the level of the tax administration of Ukraine today is one of the last places in the world.

Administrative and legal capacity on tax collection today does not reflect its key aspects of the system, including objectives, activities Unity taxpayers and administrative authorities in respect of the achievement of these goals, defining the role of taxpayers, their status as a central entity in the sector, the role of the regulatory authorities, as subjects of administrative support to the process of tax collection, concept and content of tax administration as a major functional orientation of the corresponding organs, both in Ukraine and in the world.

Chapter 3

# CIVIL, COMMERCIAL LAW AND PROCEDUREC

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## CONCEPT OF PERSONAL NON-PROPERTY RIGHTS PROVIDING OF HUMAN'S NATURAL EXISTING

The article is devoted to lighting of issues of doctrinal definition of the concept of personal non-property rights providing of human's natural existing in Civil Law of Ukraine. Problem issues of forming of personal non-property rights providing of human's natural existing in civil and law doctrine are considered in frames of the article. Personal non-property interests are formed on the base of personal non-property benefits. Personal non-property interests appear as a result of individual's need to satisfy his own demands. In our opinion, personal non-property interests are the goal of implementation of specific personal non-property rights.

So, personal non-property legal appears as a result of implementation of personal non-property rights to satisfy personal non-property interests expressing individual demands, which are content of personal non-property benefits.

On practice it is very important to form a mechanism of implementation of personal non-property right. This mechanism includes procedures of realization of models of humans' proceeding in the sphere of his private life as for different non-property benefits, and guaranty of implementation of these rights.

Personal non-property rights providing of human's natural existing, are general human rights are provided by legislation, which provide possibility to satisfy his own biological and physiological needs in the sphere of his private life due to meet the diverse needs are caused by historical development of society and by nature. Legal interests of a person are directed to providing of his existing in living conditions are the base of personal non-property rights providing of human's natural existing.

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## IN REFERENCE TO THE CONCEPT OF PARTIES AS THE MAIN PARTICIPANTS OF CIVIL PROCEDURE

The lack of a single approach to scientific understanding and interpretation of the term "party in civil proceedings" lied in the foundation of a given article. The authors have collected and analyzed various conceptual expressions of many different conceptual lawyers of the past and present century for the complex scientific analysis of a procedural legal status of the parties in a civil trial. The attention of scientists has been focused on the absence of an updated legal definition of parties in civil proceedings. Within the measures of a given article various features of the parties distinguishing them from other persons involved in the case have been outlined. Analysis of doctrinal and normative sources highlighted in the article leads to a conclusion about the main defining feature – the legal interest of the parties. Furthermore, it is mentioned that the legal interest is characterized by features such as substantive and procedural recourse as well as an essentially opposite character.

The definition of the term "party" in a civil trial is provided and the legal prescription requirement of the aforementioned definition is brought to the attention of scholars.

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## ABOUT THE UNDERSTANDING OF ALTERNATIVE DISPUTE RESOLUTION

The paper given by the problem of the theoretical approaches to the definition of alternative dispute resolution. It was noted that international experience testifies that in case if informal procedures, methods and technologies are implemented, which are covered, as a rule, by notion "alternative dispute resolution", referring to court may be the only efficient method of defense. The author argues the thesis that alternative dispute resolution in the narrow sense is collection of structured procedures, which provide dispute settlement by the parties without the permission of the dispute on the merits in the implementation of justice function or due to the implementation of the power management functions. This characterization of alternative dispute resolution reflects mainly domestic "statistical framework" studied phenomenon, and therefore is incomplete because it does not allow itself to characterize the specificity of the scope of alternative dispute resolution, which covers a specific kind of public relations. Based on the above a conclusion was made about a possibility to consider alternative dispute resolution as a process of dispute resolution , based on activities of the dispute parties on its settlement in the framework of direct negotiations and/or attracting third parties as the parties agree that are entitled to render consultative, expert and/or facilitation assistance to reach a mutually accepted decision of the dispute or the ones having the right to make a decision without a status of a court decision that must be executed by the parties on their free will.

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## THE CONCEPT OF ECONOMIC AND TRADE ACTIVITIES

This paper investigates the definition of trading activities and the economic and trade activities listed in the existing legal acts and scientific literature that explores the exercise of commercial activities on the territory of Ukraine.

Based on the analysis concludes that the current legal act containing different content of the concept of trading activities and the economic and trade activities, due to the desire of the legislator to define a certain number of relationships within the scope of these legal acts and regulation set certain relationships to implement some trading, or the authorization of a certain type of commercial activity. However, these differences have a negative impact on law enforcement, in fact cause some difficulties in the implementation of business entities.

The study made it possible to formulate the author's definition of economic and trade activities as an independent business activity aimed at selling products and industrial supplies and consumer goods, performing entities regardless of ownership for a fee to a professional.

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## THE LEGAL STATUS OF THE TREATY OF EMPHYTEUSIS ON UKRAINIAN LEGISLATION

Ukraine's transition to a market economy, an important political, economic and social processes in the country makes it necessary to improve the legal system of Ukraine and bringing it in compliance with international standards in the legal status of persons, including in terms of property rights. In the Civil code of Ukraine dated 16 January 2003 tendencies recognition of the priority of private law and comprehensive protection of interests and rights. One of the most important elements of the legal status of an individual is the right to property. It establishes the state privlacnost", "accessories" certain material benefits to a specific person, is the basis of individual liberty and economic relations in society. But this state can be implemented also with other property rights, which have an absolute character and together with the right of ownership are complex Institute of proprietary rights. Among the norms of this institution, a significant place is occupied by the group of standards related to the right to use someone else's land plot for agricultural needs (emphyteusis), which is, first of all, the object of legal regulation, which in these relations is the earth.

Thus, impression have the right to limited use of a land plot for agricultural needs. Ukrainian land legislation is developing in line with the observance of continental European legal tradition, but so far it does not cover all aspects of the establishment of emphyteusis and usage, limited to the main provisions of the emphyteusis.

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## EFFECTIVE MECHANISM OF PROVIDING MORAL RIGHTS CHILDREN

Idea of priorities of children rights has found its indisputable legislative confirmation. Meanwhile the tendency of declaration of legal requirements specific to the UN Convention on the Rights of the Child, is reflected in the current family law. In particular, the legal regulation of personal nonproperty rights of a minor is complicated by the fact that the current legislation contains so-called "dead" norms, which only create the illusion of self-realization of granted children rights. Thus, some norms governing the determination of the place of residence of a minor are not upheld in practice, if there is no relevant prior agreement between the parents on this occasion. The interests and desires of a child concerning free movement, choice of occupation, place of training are also ignored. Realization of personal nonproperty rights in the sphere of family relations, where the child's opinion is irrelevant and is lost in the priorities of parents and other family members, is especially ignored.

The mechanism of realizing personal nonproperty rights of a child is researched in the article; the key criteria for its effectiveness are determined. So the mechanism of guaranteeing personal nonproperty rights of a child has dual character: on the one hand, it includes a set of not directly prohibited by law acts of a minor for realizing these rights, on the other it is the activity of relevant government agencies and their officials that is strictly regulated by law norms and is designed to provide the child with adequate conditions for realizing these rights and their legal compliance. Correspondently, the efficiency and effectiveness of the mechanism of realizing personal nonproperty rights of a child depends not only on the system of legislative guarantees in this area and legal, social, and material welfare, but also on the presence of supervisory agencies, with the assistance of which the state can both protect children and also ensure optimal realization of their rights.

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## NATIONAL INNOVATION POLICY IN TERMS OF TRADE LIBERALIZATION

This article deals with the problem of choosing a conceptual way of implementation of the national innovation policy, analysis of the major gaps in law enforcement strategies. An important part of it is devoted to the Ukraine's economic integration into foreign market, economic and legal framework of this process. Also were critically examined the impact of economic globalization on national economic policies and made some recommendations of the state to protect the national interests.

In the foreign policy content of national interest is to promote domestic production of goods to foreign markets and protect domestic market from imports (imports required to pay for the flow of hard currency, as the state can not import all goods, no exporting). The meaning of free trade agreements – not simplify the procedure for access to foreign markets (such as the right), in practice it is the ability to use it right out of the relevant economic efficiency. Otherwise, the national interest will not be sold, but only improved terms of trade counterparty. If the basis exports are raw or primary products are processed, then such agreements are improving the terms of trade of raw materials, which means the consolidation of the state status of the raw application to serve the needs of high-tech economies.

It is proved that foreign integration of Ukraine into the current format significantly limits state sovereignty, and thus makes the task of actively fostering innovation to modernize the economy, using all law means of legal regulation of economic relations; but the arsenal of following instruments is substantially limited. Thus, innovation policy has the following features: dynamic update technology base by law reverse (inverse) cost, the concentration of undertakings on the basis of self-organizing, converting innovations into a single legitimate source of economic growth, focus on making the final product with high added value, effective government support really promising industries, redistribution of income in favor of the export industries of high-tech industries and so on.

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## PROBLEMS OF CODIFICATION OF LEGISLATION ABOUT THE BOWELS OF THE EARTH

The aim of the this article is research of codifications problems of legislation about the bowels of the earth, ground of ecology-economics doctrine of codification of industries of legislation, where in economic activity natural resources are engaged are objects of right of ownership of the Ukrainian people, formulations of suggestions in relation to a manner and matter of new codifications act of legislation about the bowels of the earth.

The analysis of the numerous researches of in the range of problems of industries of heavy industry undoubtedly testifies about actuality of the examined question, however it is necessary to confess that swingeing majority from them are even not conceptual, and such that is expounded superficially enough, with the next raising of well-known problems and practical absence of suggestions in relation to their decision. In addition, a legislator is a find no the sense and requirement in codification of legislation about the bowels of the earth, continuing to accept different separate acts, instead of one single.

Coming from experience of European normsworks practice, it is possible to establish that the term of "codification" is used in next cases: 1) new norms are contained in the new articles; 2) new norms contained in the existent articles; 3) existent norms are contained in the new articles.

Detailed analysis of the marked factors, maintenance and forms of operating legislative acts in the field of the use, guard and safety of bowels of the earth gave an opportunity to set forth suggestions of relatively general recodification in this sphere in form Pandect about the bowels of the earth of Ukraine, in that found a reflection and achievements and constructions of inter-branch (federal) and intofields (autonomous) codification. The general plan of new model of code is offered in a next kind: Book 1. Common subsoilsright. Book 2. Contractual subsoilsright. Book 3. Subsoilsresources right. Book 4. Geological right. Book 5. Mountain right. Book 6. Underground right. Book 7. Geopower right. Book 8. Marine subsoilsright. Book 9. Subsoilsrguard right. Book 10. Right for safety of bowels of the earth. Book 11. Economic subsoilsright. Book 12. Judicial subsoilsright. Book 13. Responsibility is in subsoilsright. Book 14. Intergovernmental subsoilsright. Book 15. International subsoilsright.

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## PROTECTION OF INTELLECTUAL PROPERTY OF PUPILS IN THE EDUCATION SYSTEM

Thus, today the preparatory activities for graduation and term papers, essays in order for payment is legitimate as long as the author of the work has not proved otherwise. Using other's diploma and term papers, essays is also justified if the charter of the school does not contain a prohibition on such use.

If schools aim to improve the quality of the educational process, then can be helpful to design and implement educational institutions of Ukraine legally and economically sound policies in the field of intellectual property of the university, taking into account the objectives and conditions of the particular institution and regulated in-house regulatory document, the provisions of which would constitute a binding administration, departments, employees, doctoral, graduate and undergraduate students.

However, even some of the analysis of intellectual property rights in relation to their use of the university shows that today we are only at the initial stage of establishing a system of university intellectual property protection. And the task of any university and the state as a whole – to create conditions for the effective functioning of university intellectual property protection. It must be remembered that it is the intellectual property is regarded as the most important resource of the university, which can and should be a real factor in its economic development as the main source of basic and applied knowledge of the underlying scientific developments and research.

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## THE RIGHT OF AN INDIVIDUAL TO INFORMATION ON ABOUT THEIR HEALTH, THE RIGHT TO PRIVACY OF HEALTH

Summarizing vyscheproanalizovani provisions on the right of an individual to information about their health and the right to privacy of health, to the following conclusions: – information on the health status of an individual patient, are complete, timely and reliable data are provided in accessible for an individual-patient form that can be verbal and (or) writing (directly acquainted with the documents); – classified information provided to an individual patient, should be in the following groups: information about health care facility in which the patient is asked (ownership, founding documents, the responsibility required by law, etc.); About the attending physician (information on education, on research activities, the number of transactions and the liability for failure to properly its duties, etc.); information from a survey of patients (test results, different types of ultrasound, examination by a doctor, etc.); information about medications and treatments; -about the rehabilitation period after treatment (special diet, medications, exercise); – Propose to amend Part 1 of Art. 285 CC of Ukraine and place it in the CC of Ukraine as follows "Article 285 The right to information about their health. 1. Adult individual has the right to accurate, timely and complete information about their health status in an accessible form for her, including the review of relevant medical records relating to her health. 2. Parents (adoptive parents), guardians have a right to information about the health of the child or ward. 3. If the information about the illness of an individual can worsen his health or impair the health status of individuals specified in part two of this article shall affect the course of treatment, health care providers have the right to give full information about the health status of an individual, to limit possibility of exploring individual medical records. 4. In case of death of an individual member of his family or other individuals authorized by them, may be present in the study of the causes of death and to learn from the analysis of the causes of death as well as the right to challenge these findings to the court"; – content of the right of an individual to privacy of health of the person is an opportunity to determine the range of persons to whom it chooses to report information about their health, and the ability to request not to distribute such information by other parties; – the right to privacy of personal health are non-proprietary right of an individual, which gives it the ability to keep secret information about their health status, and require the same actions of other people, otherwise such person may apply to the competent for the protection of their violated rights.

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## PLURALITY OF PERSONS IN DELICTS IN WHICH A MINOR PARTICIPATES

The article is devoted to the plurality of persons in delicts in which a minor participates. On the basis of analyzed court decisions in cases about compensating damage, being caused by a minor, the author pays attention to conditions of responsibility as well as features of mentioned damage reimbursement. For example, it is stated that there are following features of delicts in which a minor participates: the subjects of these delicts, conditions of responsibility for caused damage and the order of its compensation. It appears that these features are tightly connected and have to be researched all together.

Also, the author highlights the problem of subsidiary responsibility which forms in cases when a minor cannot compensate caused damage out of his/her own pocket. Usually it means that such a reimbursement should be paid by minor's parents or other people who carry parental responsibility (subsidiary debtors). In this context the problem of subsidiary plurality of persons in delicts, being caused by a minor, is discussed. As known, some scientists state that such type of plurality of persons might take place in these commitments. On contrary, the author proves that such a legal phenomenon cannot occur because in described cases there are two tightly connected commitments instead of one with the subsidiary plurality. The first one forms between a minor who caused damage and a person who was a victim of this damage (the main commitment). However, the second commitment exists between the abovementioned victim and minor's parents (the subsidiary – additional – commitment).

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## PROCEDURE OF REAL ESTATE COMPULSORY ACQUISITION DUE TO PUBLIC NEED: CIVIL LAW ASPECT

Promotion and protection of human rights and freedoms defined by the Constitution of Ukraine is the main duty of the state, which should be carried out both to the rights and freedoms of the individual and to the collective rights of society and its interests in general. This problem leads to the need for the determination of the ratio of public and private interests and their balance in the law. Particularly vexed is the problem when public necessity requires satisfying general (public) interests at the expense of certain limitations of the individual's constitutional rights, for instance, alienation of land and real estate located thereon and belonging to private property for reasons of public necessity. In this case, the balance of interests is only possible in case of application to coordination of the procedure of private property compulsory acquisition not only constitutional law but also civil law mechanisms.

The author investigates the existing procedure of compulsory purchase of property for reasons of public necessity, namely in terms of balance of public and private interests, analyzes its disadvantages, the ways of balance and clarifies the effects of civil law approaches for the improvement of the compulsory purchase order.

The author suggests that principles of public law are prevailing in the existing compulsory purchase order, which is unacceptable. The author proposes to make amendments to the specified order according to which the reason for state registration of rights to property can be contract of compulsory acquisition signed between the owner and executive authority or local government.

In the article there is proposed to the introduce two-stage procedure for the alienation according to which the first phase is court decision on the recognition of the claim for alienation of executive authority or local government without determining the price and other material terms, and the second stage is the following. In case of disagreement the court makes a decision on it compulsory alienation, which defines the essential terms of the transfer of ownership.

The author believes that such model gives the owner an opportunity to protect their interests more effectively and eliminates the existing imbalance in the compulsory purchase order due to public need.

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## LEGAL CONTINUITY AS ELEMENT OF REORGANIZATION OF LEGAL ENTITY

The article devoted researching legal continuity during reorganization of legal entities as forms of their stopping. Author analyses scientific sources about

nature of legal continuity are and makes a conclusion that he is supported position

that the most well-known conceptions on this occasion differ one from other to the subjective assessment of the consequences of certain actions and to determine the boundaries of relationship.

Author underlines that in juridical literature reorganization of legal entity traditionally discovered as universal legal continuity.

Analyses legal task of the civil legal adjusting universal legal continuity in case of reorganization of legal entity. This task are: transition totality all of rights and duties with passing of activity of legal entity which reorganized to her legal successor;

distribution of duties and responsibility for their violation between a few legal successors of legal entity which reorganized in exact accordance with distribution between them of directions of activity; a facilitation to the creditors of legal entity which reorganized searching of the legal successor obliged or accountable to them and if its impossible laying-on responsibility on all legal successors with a grant to the legal successor that paid the debt of right of recourse of requirement to other legal successors.

Some authors consider that universal legal continuity takes place at all forms of reorganization, except a selection, because during reorganization in form of selection singular legal continuity takes place.

Reorganization is related to property legal continuity between legal entities, and that is why a substantial value for civil turnover has a decision of volume of rights and duties that pass to the legal successor.

During a division and selection of decision of legal successor it is complicated, because division of rights and duties of legal entity, which is divided not obviously.

The special value during reorganization has a time of origin of legal continuity ( from the moment of registration of corresponding balance or from the moment of registration of legal entity which is reorganizes), but there is no one position scientists in juridical literature about this question.

Author supports positions that equation of reorganization and liquidations are not fully justified. Replacement of subject is in legal relationships, transition of rights and duties from predecessor to the legal successor not always it takes place simultaneously in all legal relationships. Author makes conclusion that the decision of moment of legal continuity is determined individually in relation to every certain legal relationship.

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## PRENUPTIAL AGREEMENT AS A KIND OF CIVIL CONTRACT IN FAMILY LAW OF UKRAINE

The article considers the institution of prenuptial agreement (marriage contract) in the Family Law of Ukraine. This new norm, introduced into the Marriage and the Family Code of Ukraine on 23 June 1992 as a single article, as a kind of Civil Law contract in Family Law necessitates defining its concepts and, accordingly, the legal nature of the institution, its features and shortcomings of its normative regulation.

The article reviews and analyses a variety of related definitions of "contract" to reveal the specific features of the prenuptial agreement. On the one hand, its content is defined by the Family Code of Ukraine; while on the other hand, the object of regulation is mainly defined by the Civil Law.

Most scholars assume that a prenuptial agreement as a kind of Civil contract must meet the requirements of civil legal actions, such as: form, terms of preparation, content (basic ones) and particular subject composition, content and scope of the contract (specific ones). The purpose of the agreement is to settle property relations by mutual consent. Its subjects include either a married couple or those, who have applied for the registration of marriage. Therefore, the age of the Parties of such an agreement coincides with the age, prescribed by Marriage Law and governed by the relevant articles of the Family Code of Ukraine. Conditions of the Agreement must comply with the Law.

The author comes to the conclusion that prenuptial agreement is complex agreement, regulating not only the property relations of the spouses, but also the conditions of child/spouse support payments. The object of the marriage contract must include both the property belonging to the Parties on the date of Agreement as well as that to be acquired by spouses in the future. Both essential and accidental conditions of the contract, are binding on the Parties who signed it. Rights and obligations arise when consent has been reached as to all essential points of the contract.

Chapter 4

# CURRENT PROBLEMS OF JUDICIAL SYSTEM AND COUNTERACTING CRIME

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## ACTIVITY METHODOLOGY IN THE STUDY OF CRIME

The author analyzes crime within the interrelation of such categories as "human activity", "behavior", "activity". Crime is regarded as a type of purposeful activity. It is stated that crime is only a manifestation of human activity and is in natural relationship with other human activities.

The criminal activities of some individuals causing the behavior of other people who are dependent on this activity. Formed a vicious circle. People lead a criminal way of life, create criminal habitat that do not only construct but also reproduce by other people. In criminological sense playback crime appears as a social process, representing long cycles continuously sharing results of purposeful activity.

Considering the crime as a variety of substantive work, as reflected in the other types of social activity may find an explanation for such widespread criminal activity as a "labyrinth" (economic, official) selfish (embezzlement, fraud, extortion, etc.), violent (murder, injuries), politically motivated violent (terrorism, hostage-taking) and others.

The foregoing leads to the conclusion that because the criminal activity actually "embedded" in actual social relations, its analysis is not possible without understanding of practical activity. This approach requires a new look not only at the mechanism of reproduction and dissemination of crime, but also on the issue of crime prevention in the context of changes in the practical activities of man.

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## SOCIETY AS A SUBJECT OF JUDICIAL POWER LEGITIMATION

The constitutional principle that government of the people is the source, forming the basis for all government bodies, directly applies to the judiciary. State and society differently assess the legitimacy of the judiciary, but it is important that there be a balance of interests in this area, the establishment of which testify to the legitimacy of the judicial authorities.

The basis idea of the right of people to participate in public policy for the organization and functioning of the judiciary is the classical understanding of democracy as a specific form and mode of social and political life, where citizens and their associations have a real opportunity to participate in the implementation of the government to influence the formation and implementation of public policy. However, the realities of today testify to the existing serious obstacles to the right of the people to participate in the formulation of public policy in terms of organization and functioning of the judiciary, which may be a prerequisite for the low level of trust in the judiciary in Ukraine.

In the article, the author examined available in public resources for legitimizing the judiciary, in particular by: (a) participation in the process of forming the corps of judges; (b) participation in the administration of justice; (c) public control over the quality of judicial decisions. For each of the areas of this critical assessment and made proposals for their implementation in domestic practice.

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## GENERALLY-LEGAL (CONSTITUTIONALLY-LEGAL) GUARANTEES OF ACTIVITY OF JUDGES IN UKRAINE

In the modern conditions the question of appointment and electing of judges on positions acquires outstanding actuality. There is no doubt that the authority of all judicial system straight depends on professionalism of concrete judges, from that, as far as they justly and impartiality carry out the duties. The order of appointment and electing of judges on positions in Ukraine causes discussions today not only among the representatives of legal science, practical workers but also among ordinary citizens.

With development of home science of constitutional right becomes obvious, that at consideration of question of constitutionally-legal status of judges to the important questions there is an order of appointment and electing of judges on positions. It is possible to assert that the exactly category "constitutional-status", getting wide recognition. It is the scientific instrument of location and role of judge not only in the judicial system but also in society and State. By means of this category it is possible to educe the basic structural elements of constitutional-legal status of judges and outline their features.

Constitutional and legislative requirements that establish the order electing of judges on position predetermine the dispensation of the last by the specific rights and duties, and also by guarantees that allow them to carry out the function of justice effectively.

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## METHODOLOGICAL FOUNDATIONS OF DETERMINING THE CONTENT OF THE LEGAL STATUS OF THE COURT

Based on a thorough analysis of existing science views on the definition of the legal status of its content elements, the author comes to the conclusion that the absence at present of science unified conceptual understanding of what constitutes "legal status." The author states that the legal status is a multi-category that, firstly, a general, universal, including the status of various legal entities: state, society, people, etc.; secondly, reflects the individual characteristics of the subjects and the real state of the system varied social relations; thirdly, the legal status can not be realized without the duties that correspond to the rights, without legal liability, if necessary, without legal safeguards; fourth, the legal status category defines the rights and responsibilities of actors in a system that makes it possible to carry out a comparative analysis of the different statuses of subjects for the discovery of new ways to improve them.

Exploring the content of the design features of the "legal status of the court", the author comes to the conclusion that this is a kind of general concept of legal status, but a feature of the court as the bearer of the judiciary as a public authority and, finally, as a subject of judicial power relations determines appropriateness inclusion in the content of its legal status items such as competence and authority. In addition, the status of the court as a legal entity necessitates the inclusion of substantial elements of its legal status and capacity as a legal entity.

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## DEVELOPMENT OF RESTORATIVE JUSTICE IN THE INTERNATIONAL LAW

The restorative justice concept has gained the international significance over the last decade, so a number of steps were made towards its implementation both in Europe and globally.

The restorative justice fundamentals are enshrined in international instruments of the United Nations and the Council of Europe. They are divided into two main groups: a) Regulations of the United Nations and the Council of Europe containing general provisions on restorative justice; b) Regulations of the United Nations and the Council of Europe containing special provisions on restorative justice. International regulations containing general provisions on restorative justice enshrine a recommendation or obligation for the states to implement it in the national criminal proceedings.

Special attention in the UN international regulations containing general provisions on restorative justice is given to the right to use an alternative to court proceedings, mediation, conciliation. This right for the person is represented both as a duty of the UN member-states to consolidate and implement it in the national law.

Since the 1980s, a number of international documents somehow related to the use of alternative justice in criminal cases have been adopted. They include Karakas Declaration adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its Resolution No. 5/171 of December 15, 1980, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly on November 29, 1985, Standard Minimum Rules for the United Nations concerning the Administration of Juvenile Justice ("The Beijing Rules") etc. According to these regulations, restorative justice should be regarded as part of the criminal justice system, be a method to prevent crime and prevent further crimes, direct its effect on the compensation of damage caused by crime and maximum recovery of state (physical, psychological) that existed before the crime.

In 1999, the Council of Europe adopted Recommendation (R19\99) on mediation in criminal cases to assist member-states in the mediation organization and further development. In July 2002, Social Council of the United Nations adopted the Resolution on the Basic Principles of the Use of Restorative Justice Programs in Criminal Cases. It called the member states of the organization for elaboration of strategies and policies for the development of restorative justice. According to the Resolution, restorative justice can be used at any stage of the criminal justice system in accordance with the national law. It should be noted that the regulations of the Council of Europe are an essential foundation for the restorative justice implementation and regulation and largely complementary to the international regulations in this field.

Ukraine's integration into the world and European community requires from our country adaption of the national legislation to the international standards and obligations. This is particularly true of the criminal proceedings, through which the important constitutional rights, freedoms and interests of citizens are protected, taking into account the realities of Ukrainian society.

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## DEFAMATION AS A WAY OF UNDUE INFLUENCE ON JUDGES AND HUMAN RIGHTS: THE SEARCH FOR BALANCE

Defamation is rather dangerous way of undue influence on judges, but freedom of expression is one of the essential foundations of a democratic society and one of the basic conditions for its progress and fulfillment of every individual as acceptable is not only "information" or "ideas" that are favorably perceived or considered inoffensive or treated with indifference, but also to those that offend, shock or annoy.

The criminal liability for defamation is excessive, so I think that is sufficient under the law enshrined civil protection of honor, dignity and business reputation.

The European Court of Human Rights, taking cases involving defamation, produced some positions that are fundamental in nature:

1) any government interference in the exercise of freedom of expression must be prescribed by law;

2) the need for differentiation of thought and fact (to prove that the evidence of the case);

3) the importance of discussion in the press issues of general public importance;

4) increased tolerance of public figures, government officials to criticism;

5) the integrity of journalists in the preparation and coverage information (compliance "journalistic ethics"), and the use of correct forms of criticism and so on.

So, in a democratic society requires the judiciary to ensure transparency and openness that ensures cooperation, constructive dialogue with the public, including through the media. Consolidation in the fundamental law of ethical journalism and effective compliance mechanism helps to create a balance between the human right to freedom of opinion and expression and the principles of independence and impartiality of the judiciary, the protection of the reputation of judges.

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## THEORETIC-LEGAL FUNCTION'S ANALYSIS OF MAINTENANCE OF THE STATE ACCUSING A PUBLIC PROSECUTOR IN THE COURT

This article is sanctified to illumination of theoretic-legal aspects of function's improvement of maintenance of the state accusing the public prosecutor of court taking into account the innovations of criminal judicial legislation of Ukraine.

The state prosecution is certain as shown in the judicial act of public prosecutor's statement about the doing of publicly-dangerous act of the person, which penal law envisaged by a norm, that generates the duty of judicial government bodies that carry out a justice in criminal cases, to consider in accordance with a legislation a question about its guiltiness and just punishment. Maintenance of state prosecution is the activity of public prosecutor in the judicial meeting, sent to the exposure of guilt of prisoner in the crime charged to him on the basis of materials, proofs investigational in pre-trial and judicial investigation, ground of his qualification, measure of punishment, and also assistance to the court in providing of legality during realization of justice with the aim of acceptance of justice court decisions in the criminal cases.

Maintenance of the state accusing of the public prosecutor in the court at high professional level promotes, from the one hand, to taking away of legal and reasonable sentences courts, and from other hand, – to the acceptance of measures to the timely revision of illegal decisions on criminal cases. The further development of constitutional function of maintenance of the state accusing in the court must take place on soil of international standards in relation to the role of public prosecutors in the system of the criminal rule-making. The public prosecutors come forward as representatives of public authorities, guarantors on behalf of the state and in the interests of society of application of law, when his violation pulls criminal approvals, having regard to rights for physical persons and necessity of effectiveness of the criminal rule-making(ст.1) of Recommendation R (2000) 19.

Maintenance of state prosecution is the important judicial duty of public prosecutor and one of the most important constitutional functions of the office of public prosecutor on the modern stage, which plays a considerable role in the fight against criminality and in strengthening of legality and law and order in the state. The perspective directions of office organs' activity of public prosecutor in realization of function of state prosecution's maintenance must become: development of methodical recommendations from the improvement of methodology and receptions of cooperation of public prosecutors with law enforcement authorities.

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## THE ISSUES OF ENHANCEMENT OF THE LEGAL MECHANISM OF CORRUPTION CRIMES COUNTERACTION IN UKRAINE

The article focuses on certain problems of the Criminal Code of Ukraine under the conditions of enhancement of the legal mechanism of fight against corruption crimes. The imperfection of the Criminal Code is shown in regard to establishing the grounds of criminal liability of legal entities. The structure of a target of corruption crimes is described as a group of guarded legal relations. A hypothesis about the establishment of a model of criminal law fight against corruption based on the principle of "multiple borderlines" is set up. The urgency and necessity of constructing a new scientific theory of corruption crimes is substantiated.

Institutional security of the state as a part of national security depends on the state of operation management and related structures of both public and private sectors. Non-governmental institutions of the functions for a long time not only prevents the sustainable development of society, but also leads to deformities system generates crime crisis type. In addition, socio-political processes that began in Ukraine in late 2013, largely due to accumulated sense of ineffectiveness of administrative structures, their corruption. It is not difficult to establish that the period of independence Ukraine was a significant spread of crime officers, which is the main part of a corruption crime. Thus, according to the annual report of the international organization «Transparency International» Ukraine traditionally estimated as a state with a significant level of corruption (in 2013 Ukraine ranked 144 in the world with a score of 25), that despite the possible skepticism about the corruption perceptions index put it one step with countries that are considered the most corrupt in Europe, and this adversely affects the international reputation and investment attractiveness of the country and so on. However significant administrative corruption institutions are not reflected in the official statistics of the characteristics of crime in Ukraine, posted at the Prosecutor General of Ukraine (gp.gov.ua) and the Ministry of Internal Affairs of Ukraine (mvs.gov.ua), which traditionally crimes office represent a small share in the structure of crime.

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## ADMINISTRATIVE AND LEGAL FOUNDATIONS OF LEGAL LIABILITY OFFENSES

We know that corruption is the most negative impact on the economic and social infrastructure, corrosive, especially, public service and administration. Because a large part of the corruption of public officials, citizens, forced out of the scope of free compulsory services in education, health, social security free public education, social and administrative services are paid for them.

Proliferation of corruption, and in particular its most dangerous forms of

socio – Bribery – a variety of factors contribute to the objective and subjective.

In today's world there is no state which would completely absent corruption. However, in many industrialized foreign countries set up an effective system of curbing corruption, formed an atmosphere of intolerance of society as a whole to this dangerous social phenomenon.

Representatives of the business community, and often individuals who are not related to business, it is tolerant of corruption among public officials of government, in addition, the vast majority believe that corruption can be achieved through the solution of many problems.

But state officials are considering a bribe government as almost „legal" additional form of payment of their labor.

Formed thus unlawful situation, dangerously affect the national security of our country can not last indefinitely.

The effects of corruption are always reflected in the level of social and economic infrastructure of the state. The greatest danger carries political and administrative corruption, and corruption that exists in the judicial and law enforcement.

To effectively counter corruption in the civil service must use the full set of legal tools. However, central to the mechanism of combating corruption in the civil service should be given it administrative remedies. This is due to the fact that the rules of administrative law determine the mode of implementation of the civil service, they perpetuate the regime of public administration in general, governing the provision of legal advice, as well as the order of the relationship of various actors in the field of executive and administrative activities.

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## PROMISING DIRECTIONS OF DEVELOPMENT THE EVALUATION SYSTEM OF PUBLIC SAFETY STAFF

In the paper we have studied the certification as a tool for assessing public safety personnel. Set problem points in the existing system of public safety personnel evaluation. Identified areas of development assessment of public safety personnel. The necessity of the gradual introduction of a system of annual evaluation of employees.

The main purpose of assessment should be to improve the impact assessment on the effectiveness of the activities of public safety personnel, and strengthening ties with the assessment of the further service. Necessity of research regulatory existing systems currently in the annual assessment of civil servants.

The purpose of this analysis is to determine the prospects for its extension to public safety personnel, and — identification of common problems in its functioning with the aim of preventing them in the development and implementation procedures annual assessment of public safety personnel.

The system of annual assessment of public safety personnel should meet the following requirements:

– provide a unified approach and consistent implementation evaluation of staff to ensure sustainability, transparency and fairness of the chosen approach;

– system of planning should be brought into compliance with the priorities as a basis for performance evaluation.

– performance evaluation of public safety personnel should be based on criteria for achievement of expected results and strategic goals of the system of internal affairs;

– evaluation activities should be based on a clear assessment criteria and inserted blank forms;

– must create an effective mechanism for analyzing the results of the evaluation exercise training public safety Reporting and implemented for the evaluation at the level of the internal affairs of the regional level and at the level of MIA of Ukraine in general;

– must be ensured broad understanding of the feasibility and procedure for the assessment of public safety personnel (in particular, should strengthen the information and guidance of the annual assessment process of employees through proper awareness and advocacy);

– should be provided a link between the assessment and the subsequent passage of the Service, including payment of premiums for the assessment decisions about rewarding job, promotion, training etc.

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## THE CAUSES AND CONDITIONS THAT CONTRIBUTE TO THE SPREAD AND OFFENSES RELATED TO NARCOTIC DRUGS INVOLVING MINORS

This paper examines current issues related to the establishment of the causes and conditions conducive to the spread and offenses related to drugs involving minors. Based on statistics and analysis of the drug situation in the country proved that one of the factors involved in the interaction of causes and conditions for the offense of narcotic drugs involving minors, is generated by other system processes and phenomena that contribute to the occurrence and impact on drug offenses state of law and order in the state.

Article 49 of the Constitution of Ukraine stipulates that every citizen of Ukraine has the right to health. Article 33 of the UN Convention on the Rights of the Child provides for the need to take legislative, administrative and social measures to protect children from the illicit use of narcotic drugs and psychotropic substances, their use in the illicit manufacture of, trade in these substances and agents.

However, as shown by the present realities of combating drug abuse among minors, the spread of Ukrainian society among today's youth is so acute that the use of drugs by minors is dangerous social phenomenon.

All this shows the causes and conditions that adversely affect the anti-drug policy and law and order in the country, which led to the adoption of Resolution of Cabinet of Ministers of Ukraine "On Approval of Strategy of drug policy for the period till 2020" dated 28 August 2013 r. № 735- p. The leitmotif strategy of drug policy for the period to 2020 is primarily to prevent violations in the sphere of drug trafficking involving minors and the proclamation of humanistic, man centrist approach state and society to solve the problems of addiction.

It should be noted that the study of social factors that adversely affect the implementation of drug policy in the country, due primarily to the analysis of offenses in the sphere of drug trafficking involving minors. Of course, the study of this problem has both scientific and practical significance, as a basis for improvement of prevention and combating the growth and spread of crime and juvenile delinquency in society.

Only through a broad system of law enforcement, health care, social rehabilitation and other measures involving sufficient funds from the state budget can be achieved by such social conditions that contribute to slowing down the development of drug addiction and stabilize the law and order in the state.

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## AN OBVIOUSLY ILLEGAL DETENTION: PROBLEMS OF DETERMINING IN THE CRIMINAL PROCEDURAL CODE OF UKRAINE

The article is devoted to the consideration of problems arising in practice to determine the subject of the crime under Part 1 of Art. 371 of the Criminal Code of Ukraine. Problems of the subject of the obviously illegal detention are relevant in view of the adoption of the new Criminal Procedure Code of Ukraine.

The rule in Part 1 of Art. 371 of the Criminal Code of Ukraine is blanket, so this is necessary to examine the relevant provisions of the criminal procedure law to determine the number of persons who are the subjects of the obviously illegal detention.

This paper addresses the problem of identifying the individuals who are the subjects of the obviously illegal detention carried out without approval investigating judge of the court (Articles 207 – 213 of the Criminal Procedure Code of Ukraine).

The paper concludes that the investigator, who make up a protocol of detention, who handle request to the judge to take preventive measures, the prosecutor, who provides procedural guidance relevant pre-trial investigation, are a subjects of crime under Art. 371 of the Criminal Code of Ukraine.

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## PROBLEMS OF CLASSIFICATION OF CONFIDENTIAL INFORMATION ABOUT A PERSON SUBJECT TO CRIMINAL LAW PROTECTION

Observance of criminal law is guaranteed by force of state enforcement. At the same time the application of state enforcement to offenders should have an appropriate social impact. To deal with this the basic properties of the criminal law should be justice in general and its clarity and accessibility of its content for every single individual. Speaking about the low level of protection of privacy from unjustified interference by the state and individuals it is necessary to realize that the effectiveness of criminal law in this area depends on the clear legislative formulation of objective side of the crime and the correspondence between the object and general public ideas about concept and content of privacy. Personal character of protected rights specifies considerable difficulties at determination of crime object and sophisticates law enforcement. That is why clear and definite understanding of information content subject to criminal law privacy protection is one of the main conditions for the appropriate application of criminal responsibility in this area.

Analyzing regulations of privacy we can say that the main characteristic of personal information is that its owner is using certain adequate and legal measures to prevent its illegal interference. In fact, the specific content of personal (confidential) information is always dispositive as it depends on the will and actions of the individual. Confidential information is characterized by the following features: 1) it always deals with a person, his actions, thoughts and feelings; 2) person itself establishes the legal regime of disclosure; 3) disclosure of secrets may cause harm to the rights and interests of the person(s) relative to this information; 4) information relates to the implementation of the rights which are inseparably connected with the person; 5) the owner of the information can be identified.

Depending on the availability of duties to "save secrets" confidential information about private life can be divided into following types: 1) personal secrets – confidential information that is not reported to anyone; 2) professional secrets – confidential information that is reported or became known to a person of certain profession during discharge of their professional duties.

Content of personal secrets includes confidential information concerning family relationships, intimacy, sexual life, creativity and personal documents (notes) in the case if it is not reported to the public or even one of its members. Professional secrets include medical, notarial, investigation secrets, banking secrecy, confidentiality of adoption etc. Their appearance and further evolution are due to the fact that while realizing his legal rights and interest person in certain situations needs to deal with the members of certain professions – doctors, health workers, notaries, bank employees, priests etc. Those persons are criminal responsible for the violation of privacy (dis-

closure of secrets) if they have professional duty to protect personal information that became known to them during performance of their official duties.

To draw a conclusion, we can say that the article 182 of Criminal Code of Ukraine is the general norm that provides for criminal responsibility for such violation of privacy as disclosure. At the same time articles 145, 159, 163, 168envisage specific crimes depending on the status of offender.

While the national legislation in the area of privacy is not perfect the certain recommendations on its improvement were proposed: 1) as it is not possible to around the constant circle of professions the representatives of which may have access to personal information, it might also be appropriate to include a qualified crime in the content of art. 182. This qualified crime is to include criminal responsibility for the illegal collection, storage, use or dissemination of confidential information about a private and family life of a person without his/her consent, or illegal change of such information by the offender with use of his/her official position.

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## IN-PLANT TRAINING OF THE ADVOCATES OF UKRAINE: PROBLEMS OF THE LEGAL REGULATION

Important role in the providing of the implementation, defense and guard of the rights and freedoms of person and citizen in Ukraine as is taken the democratic, legal state to the right for personality on a legal aid as enshrined in Art. 59 of the Constitution of Ukraine. At the same time, the Constitution of Ukraine lays on the state corresponding duties in relation to providing of person the legal aid of the proper level.

A granting to the individual of legal aid of the proper level stipulates the necessity of existence and effective functioning of such institute, as advocacy, and also needs, that advocates constantly and continuously perfected knowledge, ability and skills and to promote qualification.

The article is devoted to complex research of problems of the legal adjusting of the institute of the in-plant training of the advocates in Ukraine. The body corporate and politic of laws, on the basis of that legal adjusting of the species, order of passing and system of evaluation of in-plant training of advocates comes true in Ukraine and the lacks of such legal regulation are certain, is analysed. Study of foreign experience in the legal adjusting of the in-plant training of advocates in countries such as the Federal Republic of Germany, the Italian Republic, Sweden and so on.

Research of problems of the legal adjusting of institute of in-plant training of advocates of Ukraine, grounds to assert that for a granting to the persons of legal aid on a due levels this institute must effectively function, and the legal adjusting of the system of in-plant training of advocates of Ukraine needs a substantial revision.

In order to improve the legal adjusting of the institute of in-plant training of advocates of Ukraine proposed to make such amendments to the legislation of Ukraine: 1) to distinguish the categories of persons, that rid of passing of in-plant training and to bind it not to the achievement of certain age a person, but with experience of advocate practice; 2) to reduce the frequency of training of advocates, who after receiving the certificate of the right to practice law passed less than 5 years, with 3 years to 1 year; 3) to establish a differential approach to the number of points that you need to get a lawyer, depending on the length of his legal practice.

With the aim of removal of defects and improvement of the legal adjusting of in-plant training of advocates, it is suggested to bring in corresponding changes to Order of in-plant training of advocates of Ukraine.

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## SPECIAL INVESTIGATION EXPERIMENT AS A FORM OF CRIME COMMISSION CONTROL

In the article were analyzed concepts, peculiar features, reasons and processual order of conducting a special investigation experiment as a form of crime commission control.

In the article is mensioned that by the adoption of a new criminal procedure code in 2012 the new institution of a secret investigative (detective) act was lead. An individual place among the indicated acts takes the group of acts united and named as crime commission control.

One of the crime commission control forms is a special investigation act. It consists in creation by the investigation and operation subdivision the corresponding circumstances that would be maximally close to reality. The aim of this experiment is checking the true intentions of a definite person, whose actions may be evidence of a felony or a treason, keeping under observation its behavior and decisions concerning the crime commission. There were analysed features that the special investigation experiment should correspond with so that not to break the rights and legal interests of a person concerning which it is conducting (which is the object of experiment).

This secret investigative (detective) act is conducted by the decision of public prosecutor. Still when conducting this act arises the necessity of temporary limitation of constitutional rights of a person, it should be conducted within the limits of constitution of Ukraine, on the grounds of investigatory judge decision on the prosecutor presentation. In this decision should be indicated the concrete executor of a special investigation experiment. Also there should be stated the circumstances that would witness the absence of provoking the person on commiting a crime during this experiment. Besides there should be pointed out the use of special simulation tools.

There should be drawn up a protocol about the results of conducting the special investigation experiment. This protocol with appropriate supplements is refered to the prosecutor. He takes measures to save the things and documents that were gotten during the experiment and would be used in criminal proceedings.

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## UNIVERSAL IMPACT ON INSTITUTIONS COMBATING TRANSNATIONAL ORGANIZED CRIME

In the article the specific of activity universal institutions in the face of the UNO is investigated in a fight against the transnational organized crime. Activity of a basic organs, congresses and institutes of the UNO is analysed in the sphere of international cooperation in a fight against transnational criminality and norms of Convention of the UNO against the transnational organized crime of 2000.

The main working body that coordinates the work of UNO member States in combating crime, is the UNO Economic and Social Council, which consists of functions, the Commission on crime prevention and criminal justice. The Commission on crime prevention and criminal justice in the 40 member States is a functional body of the Economic and Social Council of the UNO. It develops international policy and coordinates the activities of crime prevention and criminal justice. The result of the activity of the Commission is to conceptual positions, which are accepted Nations congresses on the prevention of crime and the treatment of offenders.

The Congress discusses a range of topics that are important factor of international efforts on crime prevention and criminal justice, influencing national policies and professional practices. As a global forum, congresses facilitate the exchange of information and effective practices among States and professionals working in this field. Their overall objective is to contribute to the development of effective policies in the field of crime prevention and preparation of measures for criminal justice worldwide. Crime congresses were held in different parts of the world.

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## CRIMINALISTICAL METHODS OF INVESTIGATION AS A SPECIAL PART OF CRIMINALISTICS

The article reveals the process of establishment and development of criminalistical methods of investigation as a section of criminalistics. The content of criminalistical methods of investigation and its place in criminalistics science are determined.

In particular, criminalistical methods of investigation arose as a result of integration and differentiation of scientific knowledge and combines advanced achievements of forensic techniques and tactics, concerning the optimal organization of crime investigation and trial of certain categories of cases.

Analysis of scientific literature has allowed to conclude that most scientists interpret equally criminalistical methods of investigation, using different terminology. As an example, in formulating the definition of criminalistical methods of investigation are used terms such as "section", "ending", "system", "totality", "complex", "structural part", "synthesizing section" and so on. That is, the shape is changing, but the content remains the same.

Methods of investigation as part of criminalistics science reflects the theoretical and applied aspects. It is a part of criminalistics' system and has relative independence, its own object, subject, aims and objectives. Methods of investigation arose from the needs of practice of fight against crime by specific criminalistics' tools and methods.

In the article the following conclusions are formulated:

1) criminalistical methods of investigation is a section of criminalistics, which according to the research of mechanisms of crimes and needs of criminalistics' activity develops and provides law enforcement officers and judicial staff by recommendations for rational, optimal and efficient use of the algorithm of measures, forces and means in planning, organization and pre-trial investigation of crimes and during the proceedings of criminal cases;

2) criminalistical methods of investigation is special part in relation to other structural parts of criminalistics science, since it uses, modifies and adapts their to achievements for solution of the main objectives of criminal proceedings;

3) criminalistical methods of investigation directly brings theoretical developments of criminalistics as science to the practical needs of law enforcement officers, thus providing them with applied nature.

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## COMPETENT PERSON OF FINDING THE PROOFS AS A GUARANTEE OF ITS ADMISSIBILITY

The relevance of the chosen topic is due to the practice of Criminal Procedure Code, 2012, which extends the powers of individual subjects to collect evidence. Also CPC introduced a new subject of criminal proceedings – investigating judge who independently provides the control function for subjects who are engaged in the collecting of evidence, though he is not involved in it, that's why an analysis of the features of his credentials is also required.

Since the proofs is the main base upon which the criminal proceedings are based, the compliance with certain requirements for them to be admissible is a priority for those who collect them as a violation of any of these requirements entail that the Court inadmissible evidence and the impossibility of its usage in framework of criminal proceedings.

As is known, there are four main criteria for the admissibility of evidence, namely, the proper subject of collection; proper procedural consolidation, processing, receiving evidence from adequate sources and in compliance with the law. As the consideration of all the criteria listed above is a very voluminous study, in this article the author examines in detail a single criterion – an appropriate collection.

Considering this issue, the author compares the range of entities eligible to collect evidence due to the CPC 1960 and 2012, analyzes the changes that have occurred since the adoption of the new Code, describes the authority of these entities, depending on the stage of criminal proceedings, fully and consistently states his vision of the problem and makes reasoned conclusions.

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## THE INITIAL PHASE OF THE INVESTIGATION OF MURDERS COMMITTED IN NON-OBVIOUSNESS

The article is devoted to the practical and associated theoretical issues unobvious homicide investigation, and aims to correct organization of the initial phase of the investigation of crimes committed in non-obviousness.

The instability of the financial and economic situation in the country, negative trends in the socio-economic and political spheres leading to a sharp decline in living standards, social stratification, increasing the number of unemployed people.

All these factors could not affect the deterioration of the crime situation in our country. After non- socialization much of the population significantly increases the crime rate and the number of intentional crimes. With the growing criminalization of society varies significantly and the nature of the crime, which requires not only intensify measures to combat crime, but also improve the operation of the device at investigating the detection and investigation of serious crimes such as murder.

Typical investigation of the situation of the initial phase of the investigation of murder, if the offense is obvious: the corpse is found, the person the victim found the murderer arrested. A completely different situation delves in situations where murder committed in non-obviousness, namely individual victims is not known, the person of the offender is not known; found dead person (if there was a statement about her disappearance); found dead of an unknown person or a part of the dismembered corpse; found dead with signs of staging (suicide, accident, natural death). It is clear that the complexity of the investigation is in the first and in the second case, however, the offense is committed in terms of non-obviousness, the process of identification of criminals and searching for the necessary evidence is much more complicated.

The rule of law in Ukraine designed to ensure the rule of law, the sanctity of fundamental rights and freedoms, the protection of public interests. Socio-political processes in Ukraine continue to be characterized by an increase in social tensions. One of its manifestations is a significant increase in crime in general and an increase in serious crimes against the person. Ensuring an effective fight against crime is impossible without improving existing and developing new methods of crime detection and investigation. Periodically with some regularity on the need to improve the quality of disclosure murders referred to in the regulations and special instructions (orders) of the General Prosecutor's Office and the Ministry of Internal Affairs of Ukraine. Without diminishing the value of criminal law and criminal procedural aspects, we must admit that in matters of crime detection has priority forensic aspect, in particular, methods of crime investigation and how the practice relating to crime in general and in particular non-obvious, the importance of properly organized initial stage of the investigation, which received primary evidence base.

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## CHARACTERISTICS OF THE SUBJECT OF CRIMES AGAINST THE ORDER OF BEARING AND PASSAGE OF MILITARY SERVICE

This article is dedicated to the research of the characteristics of the subject of crimes against the order of bearing and passage of military service (military crime). After analyzing the general characteristics of a subject of a crime, the author moves on to describing the "special subject" – a person with additional characteristics and establishes that the subject of military crimes is a special one.

The additional characteristics that are necessary for the said special subject are stipulated by the provisions of Art. 401 of the Criminal Code, however their correct application requires an analysis of additional legislation, most of which is in the sphere of military law. Therefore, the author performs such an analysis, defining the legal concept of a military serviceman, indicating the list of organizations in which military service is being carried out, etc. Additionally, the author provides points of view of specialists regarding which persons share certain characteristics with the subject of military crimes, however cannot be regarded as such.

Moreover, the author addresses the problematic issue of criminal responsibility for military crimes of persons that are illegally enlisted (accepted, passing) to military service. Scientific literature provides two opposite theories towards this, however both of them have certain flaws. Apart from that, the question is unresolved on the legislative level and only partially resolved on the level of court practice. Thus, the author suggests that additional research in this direction is necessary.

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