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CONTEMPORARY ISSUES OF THEORY AND HISTORY OF STATE AND LAW

UDK 340.15

L. M. Dobrobog

THE PROCESS OF BRANCH FORMATION IN THE CONTEXT OF LAW-MAKING: THEORETICAL AND LAW DISCOURSE

This article deals with the issue of law-making as a factor of the process of branch formation. It is claimed that the state of social relations that does not meet the needs of society and inhibits its development, is a factor law-making. Law-making gets back to just social altercations at the moment of realization of their nature and the need to overcome them by establishing the standard of law.

Attention is paid to the fact that the problem of regularities of formation of branch of law as a structural element of the system of law is closely related to the following phenomena of social reality as «consideration of law» «source of law» and «law-making».

It is noted that with the emergence of the state law enters into a new stage of its development. It becomes more formalized and systematic. Its written form – laws – appears. The state is able to oversee the implementation of laws through professional activities of specifically authorized agents, resorting if necessary to staff organized physical coercion. At the same time the historicity of law attests its independence and supremacy towards public authorities.

Develops the thought that law-making as the process of origin and creation of law consists of three phases:

1) formation of specific legal relationships directly in public life and their self regulation on the base of the material conditions of society and empirical legal awareness of participants of these relations;

2) summarizing by the state specific legal relations that have arisen through evolution, the formulation of appropriate behavior of a general nature and their reflection in the legal acts or other legal documents;

3) implementation of the formal rules of law, again, into specific social relations, but more comfortable, stable, and reserved.

Attention is paid to the fact that in the modern legal literature the concept of «law-making» is not clearly understood, which is stipulated by different views on the phenomenon of «lawmaking», «rule-making». The widespread definition of law-making in the legal and scientific literature that connects it with the process, the contents of which is activities concerning mandatory standards making or as the process of collection of these law standards into laws.

Law is closely related to society existence, and therefore the conditions of law origin are social conditions. Outside of society, in nature law does not exist. Law operates only within a society, as a specific order of social relations, some members of which have social freedom to act in any way that ensured by the corresponding duty of others. The emergence of appropriate social relations that need and can be handled by the standards of law, and significant changes in the existing social relations, which again causes the need for legal regulation that is the formation the subject of legal regulation is the first step in the mechanism of formation of the branch of law as a structural element of the system of law, determining the dependence of branch formation from law making.

***Keywords**: branch of law, branch formation, law, law making, social relations.*

UDK 340.15 (477)

M. O. Rozumnyi

PROBLEMS DISPLAYING LIBERAL DOCTRINES IN THE FOREST LEGISLATION

The article is dedicated to study the historical dynamics of laws for the forest protection that were adopted in different historical periods, based on liberal doctrine. It is shown that the provisions of liberalism, that were enshrined in legal acts, expected reduction in government spending in this area by the refusal of the state of forests and content services.

Liberal ideas have found their support in pre-revolutionary Russia, represented by Catherine II, who was a classic representative of the era of enlightened absolutism. The practical realization of the liberal doctrine in the forestry sector was the publication of September 22, 1782 imperial decree. The liberal approach was reflected in the decree by fixing declarative reference to forest owners increase their property by improving the condition of forests, protection from destruction, expanding areas of this natural resource.

Another example of use in the forest legislation of liberal doctrine, as alleges V. P. Nepiyvoda, became Prussian Forest Act 1811. The reasons for his publications include the fact that Napoleon defeated Prussia had to pay a large indemnity, funds for which was decided to find by selling state forests. For the fastest selling, the government had to encourage potential buyers to adopt the law on non-interference in exploitation of the private forests. Similarly, under the influence of liberal ideas of A. Smith, the Government of Bavaria and the Austrian Empire also adopted legal acts to limit the rights of the state in this area.

In the modern history of forest legislation a liberal doctrine adopted was incarnated in accepted State Duma of the Russian Federation, November 8, 2006 Forest Code. Review contents of Forest Code shows fixing in it the main provisions of liberal doctrine. It is the reduction of the administrative apparatus, the elimination of control services, aviation forest protection, the transfer of authority from the management to regional authorities, tenants, forming a market of forest products, commercialization, i.e. the introduction of payment for all types of uses, permits to privatize certain categories of forests, lack of requirements for forest management.

By analyzing the imperial decree 1782, adopted by Catherine II, Prussia Forest Act 1811 and Forest Code in 2007, it is shown negative consequences of using a liberal doctrine that leads to the deterioration of the environment forests, a sharp increase in illegal logging, theft, and forest fires.

Keywords: *liberal doctrine, forest legislation, legal act, illegal logging, forest owners.*

KEY ASPECTS OF CONSTITUTIONAL AND ADMINISTRATIVE LAW

UDK 341.43(477)

V. P. Bosyi

CONSTITUTIONAL- LEGAL REGULATION OF PUBLIC POLICY OF UKRAINE IN THE FIELD OF REFUGEES

The article analyzes the theoretical and legislative aspects of the constitutional-legal regulation of public policy of Ukraine in the field of refugees and the motivation for proposals for its improvement.

The paper studies the definition of the term «public policy», gives the author's definition of the term «public policy of Ukraine in the field of refugees», and turns the attention to the importance of this policy to determine ways to improve the national legislation on refugees.

The article states the conclusion that Ukraine, being the member of the UN and the Council of Europe, shall implement the public policy in the field of refugees in accordance with international standards. The paper studies the international instruments containing the pointed standards and discloses their contents.

The article determines the subjects of public policy of Ukraine in the field of refugees.

It was noted that the public policy of Ukraine in the field of refugees is a part of the state migration policy, the formation of which began with the Declaration of State Sovereignty of Ukraine dated July 16, 1991.

The paper gives attention to the fact that before the adoption of the Constitution of Ukraine 1996 in our country the conceptual documents defining the public policy in the field of refugees were not accepted. Certain aspects were contained in the laws and other acts adopted on refugees.

The article investigates the development of national legislation defining the public policy in the field of refugees. It was particularly noted the importance of the Concept of the state migration policy approved by the President of Ukraine on May 30, 2011. It defines areas, strategic tasks of public policy in the field of refugees, principles and priorities of the activities of public authorities in this field.

The paper considers separately the question of the regulation of public policy in the field of refugees in the context of European integration of Ukraine.

It is concluded that in our country the attention to the constitutional-legal regulation of the public policy in the field of refugees in accordance with international standards is paid. There are substantiated the proposals for its further improvement.

Key words: *a refugee, constitutional-legal regulation, state policy, legislation.*

UDK 342.722

O. P. Vasylchenko

CONCEPT AND CHARACTERISTICS OF LIABILITY FOR BREACH OF THE PRINCIPLE OF EQUALITY OF RIGHTS AND FREEDOMS OF MAN AND CITIZEN IN UKRAINE

Efficiency of realization of the principle of equal rights and freedoms of man and citizen in Ukraine to a great extent contributes to establishing legal responsibility for the failure of this principle.

The purpose of this article is to define the concepts and features of the constitutional

and legal responsibility for the violation of the principle of equality of rights and freedoms of man and citizen in Ukraine.

To determine the nature of the legal liability for the violation of the principle of equal rights and citizen freedoms in Ukraine, it is necessary, on the one hand, to define its place in the system of legal, on the other, to establish its specific features, based on the subject of regulation. Based on the fact that the constitutional and legal responsibility is an integral part of the mechanism of implementing the principle of equal rights and freedoms of the citizen, the direction of research has to focus precisely on the features of this sphere of relations.

Constitutional and legal responsibility is the primary legal responsibility in the constitutional law of Ukraine. In addition, this category is a separate institution of constitutional law.

A feature of the constitutional and legal responsibility is the lack of a specific regulatory system of warehouses relevant offenses. The procedure for bringing to constitutional and legal responsibility is also not clearly defined, which leads to many abuses of the lack of mandatory approach to the regulation of these relationships, as well as a significant dispersion of the relevant rules.

Thus, the constitutional and legal responsibility has a special place in the system of legal liability and is characterized by the possibility of special measures of state coercion for violation of the constitutional principles.

Constitutional and legal liability for the violation of the principle of equality of rights and citizen freedoms in Ukraine can be defined as an independent typeof legal responsibility, which provides for the positive aspect of the overall responsibility for the subjects of their responsibilities for the implementation of the Constitution of Ukraine established the principle of equality of rights freedoms and citizen or in a negative aspect - the use of measures of constitutional, administrative or criminal liability for violations of this principle, the constitutional commission torts (offense).

The disadvantage of the constitutional and legal responsibility for the violation of the principle of equal rights and citizen freedoms in Ukraine is that at the moment there is still no clear regulation of composition of the relevant constitutional torts and, as a consequence, the constitutional and legal sanctions, as well as a mechanism for implementing the constitutional liability in the system.

***Keywords**: the principle of equality, the constitutional and legal responsibilities, rights and freedoms.*

UDK 34.01:342(477)

N. V. Verlos

RECEPTION IN CONSTITUTIONAL LAW: THE ESSENTIAL CHARACTERISTICS THROUGH ANALYSIS AND SYNTHESIS OF SCIENTIFIC THOUGHT

The article investigates the problem of determining the nature of the reception in constitutional law as a legal phenomenon, based on the general theoretical analysis and synthesis of the evolution of domestic and foreign scientific thought

Study author concludes that the reception should be seen as a phenomenon on the one hand, and the other as a process and focuses on the fact that «borrowing», «adaptation», «perception», «continuity» and «harmonization» «implementation», «transformation» are separate parts of a whole, because the recipient country is not enough to just technically transfer rules donor country's own legal system, it is necessary that they «worked» thus actually adjusting certain range of public relations.

In addition to the analysis and synthesis of domestic and foreign legal thought, the

author offers a reception regarded in several ways: first, as the perception of the right of a State regulations (regulations) previously existing states. Second, as a technical decision-relevant public authorities law, which textually repeat rules of international instruments thereby contributing to the fulfillment of international commitments. Third, as an imposition (forcing) the adoption of the law of one state to another as a result of some political pressure. Fourth, during the reception, you can also understand voluntary borrowing law of a State if probilnosti certain range of legal regulation of social relations.

The author notes that the science of constitutional law today laid an important role in the study of constitutional and legal reception of foreign (including European) law and studying the problems associated with the corresponding reception not only the law but also specific legal principles and institutions belonging the European civilization tradition, another type of normatively, specific results and their introduction into the national political and legal and constitutional-legal reality. It is a constitutional right as a leading sector of the national legal system contains provisions that are basic to all other areas of law and establishes the basic principles of regulation of social relations.

It is proposed to conduct effective constitutional and legal modernization focused on European legal traditions identify the main priorities of this process: 1) should contribute to the promotion of democratic constitutional development of standards and effective implementation of the provisions of the Constitution; 2) harmonize the profile constitutional legislation in accordance with ratified legal acts that have become part of internal national law; 3) to the unification of normative legal acts in order to avoid duplication of regulatory control; 4) to conduct anti-corruption expertise of legal acts; 5) define the organization of public administration with a focus on decentralization, which adhere to the rule of law and capable of ensuring the constitutional order in the country; 6) to reform the electoral law to ensure the most democratic way of formation of representative bodies of state and local governments; 7) Ensure quality updated model of local government based on the principles of subsidiary; 8) delimit jurisdiction between state authorities and local governments; 9) ensure that the reform of territorial organization; 10) settle legal grounds and procedure for constitutional and legal liability for abuse of authority (or officials) state and local authorities of their powers; 11) ensure the right of citizens of Ukraine to participate in all forms of direct democracy and consider introducing e-democracy; 12) settle legal order of a local referendum as the main form of municipal democracy. This list is not exhaustive, so the need for further scientific study and theoretical formation standardized quality updated doctrine.

In summary, there is the need for a scientific study of the general concept reception European standards in state-constitutional legislation national Ukraine, development of implementation mechanisms, consistent implementation in practice of constitutional and legal construction due to theoretical and practical significance of this problem at the present stage of our country.

Keywords: *constitutional and legal reception, globalization, legal acculturation, legal transplantation, legal migration, mutation legal, legal annihilation.*

UDK 342.9

N. L. Guberskaya

THE CONTEMPORARY APPROACHES TO THE CLASSIFICATIONOF ADMINISTRATIVE PROCEDURES

The content of the notion «administrative procedure» is reveal. Analysis of the main approaches for dealing with the administrative procedure makes it possible to define it as a standard established order of coherent actions of public authorities aimed at the adoption of power management decisions and the implementation of the powers of non-consideration of

the dispute or the use of coercive measures. The content of administrative procedures is enshrined administrative procedural rules of procedure for the consideration and decision by the executive authorities and local governments of individual administrative cases to safeguard the rights and legitimate interests, as well as the implementation of the relevant responsibilities of all subjects of administrative relations.

The analysis of contemporary scientific approaches concerning classification of administrative procedures is performed. The basic criteria of classification of administrative procedures are determined. Thus, the administrative procedures in the field of public administration can be differentiated on the basis of the following criteria: 1) the nature of the administrative proceedings; 2) The focus of the administrative bodies; 3) The existence of a dispute (the nature of the administrative case); 4) the subject of administrative and procedural initiatives relations; 5) the nature of the legal consequences for the subject of administrative relations; 6) the procedure of (settlement level) administrative procedure; 7) functional purpose of the administrative procedure.

Keywords: *administrative procedure, types of administrative procedures, administrative and legal relations, administrative-procedural activities.*

UDK 342.8

O. V. Filonov

MODERN ELECTORAL SYSTEMS, THEM POSITIVE AND NEGATIVE LINES, PROSPECTS OF DEVELOPMENT

The basic electoral systems are considered from the point of view the exposure of their failings and advantages in modern terms. Advantage of the majority system of absolute majority consists in that it in a country with withstand democratic traditions allows to create a stable government comparatively. Application of the proportional systems allows to provide relative accordance between the amount of voices and amount of mandates.

In interests of connection of dignities of the majority and proportional systems and exceptions peculiareach of them failings next to connection of both systems in one countries applyi the system of the passed voice, the mixed systems.

From the point of view specialists-mathematicians which created the computer model of modern electoral process ti create ideal democratic election procedures is almost impossible. Therefore at the estimation of the electoral system a decision role is played by correlation of priorities: if the main is consider setting up a stable effective government, advantage gives oneself up the majority system; if an accent is done on an adequate representative office in parliament of interests of different groups of population – to proportional, or mixed.

Thus application in the electorallegislation of country of the certain electoralsystem influences not only on the results of electoral process and distributing of deputy mandates but also on creation and personalcomposition of government of the state. Therefore in the modern terms of the world country tryto improve party political structure of society reformation of the national electoral system. But on efficiency of functioning in society of the electoral system can carry out influence qualifications and barrage points.

Keywords: *elections, electoral process, majority system, proportional system, mixed system.*

UDK 342.745

V. S. Shestak

HISTORICAL AND CULTURAL OBJECTS: LEGAL DETERMINATION

Research of the phenomenon of culture as historical and cultural experience of people, which arises up, develops and realized in different socio-economic terms, laws and lines of their activity, passed from a generation in a generation as the valued orientations and ideals, interpreted in traditions, ceremonies, works of art, has an important value for development of culture. To the number of displays of the phenomenon of culture as historical and cultural experience of people, in which she is incarnated in the most vivid forms, surely, it follows to take the objects (objects, processes, phenomena) of cultural legacy, because the certain values of archaeological, aesthetic, ethnologic, historical, architectural, artistic, scientific or artistic plan find the embodiment and reflection exactly in them. Importance of maintenance and guard of these objects is related to that a історико-культурна legacy is one of main factors of forming of the Ukrainian national identity and revival of spirituality of the Ukrainian people. Accordingly, her guard and use is part of activity on maintenance, from one side, unicity of Ukraine as sovereign and independent state, and from the second is confirmation of her status as a competent participant of world process of development of human civilization.

For this reason confession of importance of cultural legacy as the special phenomenon and necessity of her maintenance found the reflection in fixing at constitutional level of duty of the state on her guard. Taking into account that realization of this duty is carried out mainly due to activity of the state and his authorized organs, because responsibility for the guard of cultural legacy is priority of every country, then such activity it follows to examine as part of realization of her cultural function. The main condition of the proper realization of this function is her normatively-legal providing, including. providing of activity on a guard and use of objects of cultural legacy.

Taking into account it there are all grounds to mark that from that, as far as full and the basic concepts which touch historical and cultural objects comprehensively worked out in corresponding normatively-legal acts, in general cultural legacy, depends substantial character and that, their guard and use is comprehensively provided as far as. In fact only at that rate можно clearly to distinguish the object of providing (cultural legacy), find out her substantial signs and to accept corresponding organizational, legal, financial and other measures with the purpose of her guard and use. Id est, the decision of questions of determination of concept, value and types of historical and cultural objects directly contacts with the proper realization of row of positions of Constitution of Ukraine (cm.cm. 11, 12, 54, 66).

Keywords: *the state, right, culture, historical and cultural objects, objects of cultural heritage, monuments of history and culture, cultural values.*

UDK 342.57 (477)

A. O. Yanchuk

THE CONCEPT AND THE MAIN FEATURES OF THE PROTECTION ACTIVITY OF THE PEOPLE

The article deals with the normative consolidation of «protection», scientific approaches to the concept «protection activity of the people» and certain related terms; opinions of various authors on this issue are also analyzed. As the result of the analysis,

scientific approaches to the determination of the concept mentioned are summarized, its features are distinguished, and the author's definition of the term is proposed.

The author points out that with the development of the ideas of democracy, the declaration of people as the only source of power in the state and the constitution of the relevant provisions in most countries, the issue of the possibility of the people to defend its authority becomes essential. Given the abovementioned, it is reasonable to study the concept «the protective activity of the people» and to identify its characteristics.

Within the legal framework of our country, the term «protection» is associated with the sectoral orientation of the appropriate activities. However, regarding the execution of protective activity of the people, our legislation as well as researches does not give the definition to the concept and does not even operate it.

It is pointed out in the article that, despite the absence of the provisions concerning the possibility of people to carry out direct protective activity in the Basic Law of Ukraine, the constitution of the people as the only source of power in Ukraine proves the permissibility of such activities.

The attention is also drawn to the fact that the progress in scientific research, scientific development of this subject may be observed. In addition to the classical presentation of issues of the protection's peaceful forms are increasingly beginning to be explored, as well as the other protective activities of the people. In some cases, attempts to distinguish protective forms of non-peaceful activities from crime are being done.

The author comes to the conclusion that the protection activity of people may be characterized by some general and special features, which makes it possible to provide the authors' definition of the term «protection activity of the people».

Keywords: *the direct exercise of power by the people,* people's sovereignty, government by the people.

MODERN PROBLEMS OF LOCAL GOVERNMENT IN UKRAINE

UDK 342.553(4-6EC)(045)

Y. V. Boyko, O. B. Tsyklauri

EUROPEAN EXPERIENCE OF THE ORGANIZATION OF LOCAL SELF-GOVERNMENT IN THE CONTEXT OF MUNICIPAL REFORM IN UKRAINE

The article deals with current issues of local self-government reform in the EU Member States. With the accession to the European Union in front of Ukraine there is a difficult task concerning the important structural, functional and organizational reforms of systems of the local authorities organization. These reforms relate to different territorial levels of government, they touch on the relationship of local and central authorities, of different levels of the local and regional government and self-government. On the principles of the analysis of the productivity of carried-out reforms in European countries and revealed problems, proposals for further modernization and development of local self-government in Ukraine are defined.

It is concluded that the results of broad package of measures aimed at reforming the local self-government aren't possible without the formation of full-fledged effective self-government at the basic, district and regional levels with formation of the relevant institutes; optimization of the existing model of the territorial organization of the power; implementation

of the mechanisms of local democracy and their reductions in compliance with the European and international standards of local self-government.

The noted reforming is connected with a complex of actions, such as:

the definition of a reasonable territorial basis for activity of local self-governments and executive authorities;

the establishment of appropriate material, financial and organizational conditions for ensuring implementation of their own and delegated powers;

the separation of powers in the system of local self-government and executive authorities at different levels of administrative-territorial device by the principle of subsidiarity, and also between the executive authorities and local self-government on the principles of decentralization of the power;

the input of the mechanism of the state control over the compliance of the Constitution and laws of Ukraine, decisions of local self-governments and quality of providing public services to the population;

the activization of cross-border cooperation, as an important component of the international legal capacity of territorial communities and local self-governments, improvements of the theoretical principles and development of methodical recommendations concerning its development at the local level;

the maximum involvement of the population to adoption of administrative decisions, assistance to development of direct democracy forms, etc.

Keywords: *reform of local self-government, structural reforms, functional reforms, organizational reforms, financial reforms, democratization, decentralization, subsidiarity, cross-border cooperation.*

UDK 352.07:342.553(045)

O. M. Horaschenkov

THE NSTITUTIONAL SUPPORT OF THE POLICY OF PRESIDENT OF UKRAINE ON LOCAL GOVERNMENT DEVELOPMENT

The article deals with the constitutional and legal questions the place and role of institutional support municipal and regional policy head of state formation and matters of local government and the implementation of European standards of local democracy in modern terms intergovernmental European integration.

As head of state, President of Ukraine is the highest official in the country. Therefore, it shall have the authority to act on behalf of Ukraine as the inner life of the country and in international relations. The Constitution leads to the conclusion that the President of Ukraine is the highest official of the Ukrainian state, which must ensure integrity. Thus any modern European state is quite decentralized, which finds its expression in the strengthening of local communities and carried out on their behalf and for their benefit local government, in order, including the most complete of the local rights of members of the respective communities.

It is claimed that at the current stage of legal development of institutional support for the policies of President of Ukraine on the development of local self-government - a mutually agreed set of activities and consultative, advisory and other subsidiary bodies and services, establishment and further coordination of which carries the President within its competence to introducing the basics of presidential municipal policy in Ukraine and ensure regular communication links with the President of Ukraine local government.

Keywords: *the President of Ukraine, head of state, local government, subsidiary bodies, institutional support, local democracy.*

UDK 342.533(477)

V. I. Topuzov

PROSPECTS OF UKRAINE LEGISLATION ON MUNICIPAL AND LEGAL SANCTIONS

This article describes the development prospects of responsibility of local government to the citizens and the state. With regard to liability to bulks - that will be the main elements of the reporting of systematic control over the activities of these authorities before a resident of certain communities. Work of local governments and officials must fully comply with and not contrary to the legislation in force, and in the presence of data breaches - the state is obliged to their powers to stop these actions. Also points to the existence of problems in the implementation of control by the communities and the state over the activities of local governments and officials.

Accountability of officials and territorial communities is one of the important mechanisms for ensuring transparency of their activities, improving the participation of members in the local government and access to public information.

Keywords: *territorial community, police, government, deputies, officials, reporting.*

MODERN TRENDS OF THE DEVELOPMENT OF INTERNATIONAL LAW

UDK 341.174:061.1 EU(045)

Y. O. Voloshin, E. V. Hodovanyk

THE ORGANISATION OF THE EUROPEAN PARLIAMENT IN THE CONTEMPORARY CONDITIONS OF INTEGRATION

In the article we can see the organizational aspects of the European Parliament in contemporary integration processes.

Shown that its internal organizational structure and procedures of the European Parliament at the present stage of European integration interstate is as close to the structural, administrative and nominating plane Parliament to the classic national state as the highest elected representative body of the people.

It is noted that such constitutional legal status allows the European Parliament to make a very important concept opinion on the growing role of supranational bodies of the European Union in the development and implementation of a common EU policy following the entry into force of the Lisbon Treaty, which gave a powerful impetus to further deepen institutional reforms of deepening integration component .

According to the author, in the circumstances of such benefit are seen to intensify and strengthen cooperation and institutional relations of the Verkhovna Rada of Ukraine and its structural divisions, factions of political parties and parliamentary groups of the respective structural units of the European Parliament to promote further European integration of the Ukrainian state and its implementation statutory strategic European choice at the highest political and legal level of functional inter-parliamentary cooperation.

Keywords: *organization, composition, structure, the European Parliament, the*

parliamentary system, parliamentary procedure.

UDK 341.1.8

M. I. Golbin

HISTORY OF THE INTERNATIONAL LEGAL COOPERATION OF STATES IN PROTECTION OF LABOUR AND SOCIAL RIGHTS OF SEAFARERS

This article deals with a general process of the occurrence and construction of the international legal cooperation of States in protection of labour and social rights of seafarers. It is determined a period of the occurrence of the notion «seafarer», the legal notion «compensation to seafarers in case of loss of the vessel or flooding», it is allocated the incunabula of the recent right of seafarers to the qualified training. It is analyzed in the navigation history the development of the legal norm prototype in protection of labour and social rights of seafarers, in particular «special status», which was the customary laws of pirates in XVII – XVIII century, which concerned main rights of seafarers such as: right on fair labour agreement, right on wages, right on holiday, right on compensation in case of mutilation or illness, right on medical care.

Keywords: *international law, international legal cooperation of States, labour rights of seafarers, social rights of seafarers, seafarer, labour and social rights protection, history of international legal cooperation.*

UDK 348.07(4-6ЄС)

A. S. Ermakova

THE LEGAL STATUS OF THE CHURCH AND THE REGULATION OF STATE-CHURCH RELATIONS IN THE CONTEXT OF EURO INTEGRATION PROCESSES IN EU MEMBER STATES

Influence of catholic church is certain on becomings idea of European intergovernmental integration. The evolution of canonical right is analysed and he is set modern value in a context state church relations in Europe. The attempts of walkthrough of meaningfulness of the system of values are done formed within the limits of catholic church for modern European society. The points of view of anchorwomen scientist of sphere of religion, sociologists and legislators are resulted, in relation to the role of catholic church in the processes of European intergovernmental.

It is certain that principles of right of conscience and freedom of religion are key constitutional principles, and that is why have a determining value in the context of forming of model state-church relations. Political integration has for an object creation not only of single civilization space, but also development for all multinational, multicultural and multireligious European continent general normatively legal space. In this context in a most measure and the value of church opens up, as long time its system of values and dogma of christian faith formed unwritten but proof norms of moral, including to the society moral.

The analysis of the legal adjusting is conducted state-church relations and position religious organization in some countries of EU. Certain features of the legislative adjusting of place of religion in public life of the European countries in the context of eurointegration processes. The division of states-members is in particular offered EU after the degree of influence of church on in public political processes in a country. The analysis of constitutions of separate countries showed different attitude of society power toward a church, as to the supranational separate European public institute. At the same time the European countries, especially in the context of intergovernmental integration, acknowledge meaningfulness for

the subsequent political processes of the system of civilization values developed with participation of church.

Keywords: *The European Union, Catholic church, religion, state-church relations, the european integration.*

CURRENT ISSUES OF LAW ENFORCEMENT, CRIMINAL PROCEEDINGS AND FORENSIC SCIENCE

UDK 343.1

Y. M. Miroshnychenko

BRIEF TYPOLOGICAL CHARACTERISTICS OF UKRAINIAN CRIMINAL PROCEEDINGS

Typology judicial forms - a method of scientific knowledge, the basis of which the division of the studied population procedural models for the group. Need typology arises from the need for orderly description of the sets rather heterogeneous forms of criminal proceedings or to study certain patterns based on the analysis of sets.

Typologization criminal process solves both epistemological and practical problems. On the doctrinal level task typology is the isolation and analysis of the essential elements that characterize the organization of criminal procedure in a particular country or a particular stage of a particular State, to demonstrate the objective laws of functioning and typological genesis of the processes. Applied problems typology of criminal proceedings is to develop recommendations regarding the organization and improvement of criminal justice that enable differentiated tasks, functions, relationships, attitudes, levels of organization of criminal procedure, depending on certain typological characteristics and ensure thus efficient functioning Criminal Justice.

Current Ukrainian criminal proceedings based on competitive basis and in type refers to the type of public-adversarial criminal process in which the charge is supported by officials because of duty, seeks to establish objective truth, but at the same time assumed innocence of the accused, all doubts interpreted in his favor, the burden of proof on the prosecution holds, that protection is endowed with certain procedural advantages, and the term «public-competitive» reflects the characteristic of civil society striving to balance private and public interests.

Key words: *criminal procedure, judicial proceedings, typologies.*

TRIBUNE OF YOUNG SCIENTIST

UDK 342.734-053.81(477)(043)

S. K. Baregamian

THE IMPACT OF INTERNATIONAL INTEGRATION PROCESSES ON THE MODERNIZATION OF THE CONSTITUTIONAL AND LEGAL REGULATION OF THE RIGHT TO LABOUR IN UKRAINE

The article is devoted to theoretical and comparative legal study of international labour standards, their relationship and interaction with the constitutional right to labour in Ukraine.

The right to labour is formalised in international acts, and international labour relations are recognized by almost all states. International legal norms in branch of labour improve position of workers, provide them a wide range of the rights and guarantees.

The creation of effective means of legal regulation of the labour relations has an important social value and requires the cardinal change of traditional approaches concerning the ensuring human rights in the sphere of labour. Using the international experience will provide the opportunities to bring the national legislation in compliance with the international labour standards. Nevertheless, the introduction of this experience should be mandatory integrate, taking into account of features that characterize the legal system of our state.

The effectiveness of bringing the national legislation in compliance with international standards depends on what way to implement the international legal norms into national legislation. Despite the continuous process of globalization in many spheres of life, in the process of electing the general vector of interstate regulation of the certain matters, each state itself establishes options of accession to certain provisions of the international standards, that is reserves the implicit priority right to election of concrete state policy in a particular field, storing the independence and sovereignty in solving internal issues.

The process of reduction of the national labour legislation to the international labour standards has already certain results. Thus, in the Constitution of Ukraine the fundamental provisions of the basic acts found reflection in the field of labour relations, the legal mechanism of protection of the labour rights, guarantees of equal rights and freedoms of the person are improved; any restrictions on the grounds of social, ethnic, religious identity, the provisions on the equal rights and freedoms men and women, equal opportunities for their realization and like are prohibited.

Keywords: *harmonization of the legislation, processes of globalizations, implementation of the European norms, constitutional right to labour, interstate integration, international labour standards, human rights.*

UDK 342.3(045)

V. V. Gavrylenko

THE STATE SOVEREIGNTY AND ITS TRANSFORMATION UNDER EUROPEAN INTEGRATION

The article examines the constitutional and international legal issues of transformation of state sovereignty latest in modern conditions of European integration and interstate legal globalization.

It is emphasized that in modern European constitutionalism can not talk about

distribution or reject the national states of their sovereign qualities, because state sovereignty is an organic continuation of people and national sovereignty, which are perceived indivisible categories and dominant tenets of a state and law. However, in this case it should be noted limitations of national sovereignty as an option for its implementation by the States concerned which finds its expression at the level of basic legal norms in European constitutional provisions on the possibility of transferring some sovereign powers to supranational bodies integration associations, and unique status depth of integration processes among these organizations has the European Union.

It is claimed that at this stage it is important to analyze the impact of integration processes on the theoretical perception of sovereignty, the scope of the exclusive sovereign powers of the state and its organs, cases of possible restriction of sovereignty, and create a model for further change of state sovereignty in the context of a progressive state and legal development of European countries.

It seems one of the areas which have the power to remain in the exclusive competence of the national authorities, is the national security and defense, but the priority in this area should implement universal and European legal and organizational standards bring together its case-law and practice developed States, including those outside the EU. Thus, any accession to supranational unions in political and economic spheres must be accompanied by appropriate legal provision, the introduction of amendments and additions to the Constitution and the elaboration and adoption of a special law on the issues of implementation of the integration process.

Keywords: *state sovereignty, transformation, Interstate European integration, implementation, national state, the European Union.*

UDK 352.07:342.553(045)

A. S. Kalinkin

THE CONSTITUTIONAL REFORM IN DECENTRALIZATION OF STATE POWER

In the article we can see the actual problems of constitutional reforms in decentralization of state power by expanding financial capacity and powers of local and regional government.

It is shown that the improvement of economic mechanisms of public administration at the local government needs to optimize the tax and budget policy to increasing the share of local budgets to other levels of government, increasing tax sources of local budgets to ensure the autonomy of municipalities in determining their own public spending and incentives to develop their own revenue base. In addition, improving social and economic mechanisms of municipal government requires local authorities effective action in such key areas as: support for small businesses; stimulating domestic investors and attracting foreign investment; promote the development of enterprises; of market infrastructure; formation of an attractive image of the municipality; comprehensive development of public-private partnerships within individual settlements and so on.

Highlights the unreasonableness of amendments and additions to the Constitution of Ukraine to change the government from unitary to federal, in the absence of underlying causes and conditions for political and territorial administrative decentralization of the weakening of central government in the realization of the national constitutional functions, such as security national security, defense, human rights and freedoms of man and citizen, sovereignty and territorial integrity of the Ukrainian state and so on.

The author believes that the purpose of proper constitutional decentralization is fiscal, organizational and administrative of competence and strengthening local communities and their elected local government, which has found its expression in the implementation of

municipal reform on samples of modern European countries and in accordance with European legal standards public governance and local democracy. Particularly relevant implementing European standards for local government legislation and legal practice is in terms of signing Ukraine Association Agreement with the European Union, the ultimate strategic objective to which the regulatory framework defined full accession of Ukraine to the EU - integration association, foundation on the principle of decentralization and maximize the scope of the rights of local communities with the provision of state real opportunity to solve local issues within current legislation.

Keywords: *constitutional reform, decentralization, public authorities, local community, regionalization, local democracy.*

UDK 340.15(477)

K. B. Kindyuk

LEGAL PROBLEMS OF DEATH PENALTY USE IN CREATIVE HERITAGE OF M. GERNET

The article deals with the scientific and legal views of the famous pre-revolutionary lawyer in criminal law Michael Gernet (1874-1953). The scientist was a supporter of the sociological school of criminal law that was implemented in his studies. The scientist in his research draws attention to the death penalty and history of the use of this type of punishment. The fight of the underprivileged classes in France, Germany, Sweden, for the abolition of this form of punishment by introducing bills, collecting signatures, petitions and the termination of funding of its implementation is shown. A comparative analysis of M. Gernet`s views and modern American specialists in criminal law on death penalty is performed.

Relevance of the research related to the fact, that during the 1990 - 2000 years in Ukraine, the death penalty existed «as an exceptional measure of punishment» in the form of execution. The Verkhovna Rada introduced amendments to the then acting Criminal Code in April 2000 that finally withdrew capital punishment from the list of official punishments of Ukraine. This issue M. Gernet devoted a lot of articles and monographs, which explores the history of the death penalty, starting with the ancient world until the early 20th century. The author, in his articles, confirms the thesis about the law efficiency of capital punishment, its inability to act as a deterrent and reduce the number of criminal homicide.

According to M. Gernet, the question about the abolition of the death penalty was raised in the Convention 6 times. In addition, M. Gernet, drew attention to the views on the death of the leaders of the French Revolution, Maximilian Robespierre, who, supported the abolition of the death penalty at the beginning of his work, and after coming to power, changed his views and became one of the ideologists of cruel terror, directed against all dissidents.

Also, scientist analyzed the adoption of the German Reichstag imperial project of the Penal Code and indicated, that for its preservation were only titled deputies.

Keywords: *criminal law, death penalty, clergy, third estate, aristocracy, criminal punishment, acts of legislation.*

UDK 349.6 (477)(045)

Y. V. Koveino

CURRENT STATUS OF FOREST MANAGEMENT: REGULATORY REVIEW

The theme of the article is devoted to normative - legal review of the current state of forest management, characteristics of control regulatory framework for forest management, the nature of this type of control and the peculiarities of its implementation.

The purpose of the article is developing theoretical basis and justification of new provisions on regulatory - legal framework of the current state of forest management, regulatory framework features control the forestry-based theory - general concepts of functional analysis pryrodnoresursovoho law and industry developments.

Scientific novelty of the results is that in the natural resource law based system, a comprehensive study on the interaction and mutual influence of central executive bodies and a large number of regulations - regulations, including regulations proposed new theoretical provisions on general theoretical aspects of their relationship essentially manifestation and outlines the regulatory - legal framework of the current state of forest management.

The practical significance of the results is developed during the study findings complement science and natural resource law for certain institutions, such as control over forest management through a comprehensive rethinking and clarifying its place and role in the implementation of activities of forest management. Certain provisions are controversial nature can serve as material for further research.

The methodological basis of the study is general and special methods of scientific knowledge, namely, dialectical, analysis and synthesis, system-structural methods. Dialectical method used in the study of theoretical aspects of the concept of forest management control. To study theoretical conclusions used methods of analysis and synthesis, and systemic and structural - to define approaches to understanding the essence of forest management and control of forest management.

The main results of the paper is to study the regulatory - legal framework regulating forest management today. Based on the theoretical - functional analysis of the provisions of law and natural resource governance and systemic approach, the definition of «forest management» and «control of forest management». In analyzing the functioning of supervisory authorities set an objective permanence of interaction and interdependence of these bodies and regulatory - legal framework regulating supervisory powers of the above. Supported constructive approach in terms of identifying shortcomings in the activities of regulatory bodies, duplication of regulatory powers. Determined that the current state of the studied forest law issues needs further improvement, in order to eliminate contradictions in the relevant legislation to enable the implementation of the mandatory requirements of permanent forest users to avoid liability forestry officials.

Found that control issues that exist in forest management, particularly with theoretical solution (discussion during the round tables, conferences relevant), and have no practical implementation as stipulated in the program FLEG 2.

It is emphasized that the practical aspects of forest management need further elaboration.

Keywords: *control, public administration, control function, forestry, forest management.*

UDK 342.5 (045)

V. A. Mykolenko

THE FORMATION AND DEVELOPMENT OF UKRAINIAN PROSECUTION TOWARDS EUROPEAN MODEL

The article discusses the general constitutional and legal issues of formation and development of Prosecution of Ukraine in modern conditions of intergovernmental European integration, resulting to be set up European model of the prosecution.

It is noted that construction in Ukraine legal, social state, chosen course to join the European Union, adaptation of Ukraine's legislation to EU legal principles by which the State Program of Adaptation of Ukraine, determine the need to improve the legal framework of the organs of Ukraine.

The question of the place of prosecution in the mechanism of state power is largely determined by its functions. However, this issue has independent significance, and in turn on the location of the prosecutors in the system of government depends on the nature of its functions.

This is especially actualized in connection with the entry into force of the new Law of Ukraine on the special prosecutor who has to bring the forms and methods of Public Prosecutions in our country with the generally recognized European standards, strengthen the real possibility of prosecution in ensuring the rights, freedoms and legitimate interests of citizens.

According to the author, the model of an independent prosecution system in the judiciary Ukraine preserving the basic supervisory functions is most appropriate for our country in modern legal conditions and fully consistent measures and obligations provided for Ukraine membership in the Council of Europe, which will contribute to implementing the concept of introducing a fair trial based on European standards.

Keywords: *prosecutor's office, the prosecutor's supervision, the European model of prosecution, European standards, prosecutor's functions, state power.*

UDK 340.15: 349.6

V. M. Poprevych

CURRENT STATE AND PROSPECTS OF DEVELOPMENT OF CRIMINAL LEGAL PROTECTION OF THE WOODS OF UKRAINE

In article the content of norms of the Criminal Code of Ukraine (2001) which regulate responsibility for forestry violations (Art. 245-247) is considered. In the text of the document there are a number of the gaps connected with lack of definition of the term «essential harm», «heavy consequences» and «illegal felling of the wood». Existence in the resolution of Plenum of the Supreme Court of Ukraine (2004) of an explanation of the term «essential harm», but without the qualifying signs is shown. Suggestions for improvement of CC of Ukraine by entering of additions into it of rather criminal encroachments and arsons of objects of natural and reserved fund, green zones round settlements, city parks, squares, objects of a recreation, the woods used in the educational and research purposes are made. For the purpose of counteraction to illegal cutting down in the Carpathian region it is offered to establish criminal liability for violation of the moratorium on carrying out continuous cabins on hillsides in the fir and beechen woods.

Other direction of increase of efficiency of the criminal legislation is counteraction to illegal cutting down in the Carpathian region the wood from which smuggling was taken out abroad. For the purpose of reduction of number of illegal cabins in the region the Verkhovna

Rada in 2000 adopted the law by which the moratorium on carrying out continuous cabins on hillsides in the fir and beechen woods of the Carpathian region was imposed, but did not establish legal responsibility for its violation. Proceeding from it, it is expedient to make additions to this law, having provided criminal liability for continuous cuttings down in firs and beechen woods of the Carpathians which did considerable harm to this natural resource.

***Keywords**: forest legislation, criminal legal protection of the wood, illegal felling, wood arson, normative legal act, Criminal code, forest area.*

UDK 342.5:347.991

T. V. Pustovoit

THE CONCEPT OF THE JUDICIARY AND ITS PLACE IN THE CONSTITUTIONAL AND LEGAL MECHANISM OF PUBLIC AUTHORITY

Work of dedication opening of legal nature of department judicial is in the constitutional mechanism of public power. On the basis of the conducted analysis key signs and constituents of department judicial are selected. An author sees, that court – it the independent type of social relations is directed on the decision (overcoming, decision and prevention) of legal conflicts in society. At the same time, a department judicial is represented through the static (judiciary) and dynamic (legal proceeding) forms of court.

***Keywords**. Court, department judicial, justice, state, society.*

SCIENTIFIC LIFE

Revue

DOBROBOG L. M. GENESIS AND DEVELOPMENT OF LAW: PROBLEMS OF HISTORY AND THEORY (O. M. ATOYAN)

The monograph describes the theoretical and methodological problems of formation and functioning of environmental law. Given the definitive determination of state environmental control, which refers to the activity of specially authorized state bodies is within and in the manner prescribed by law, to verify compliance with the requirements of the environmental protection enterprises, institutions and organizations irrespective of ownership and subordination, and citizens.

***Keywords:** theoretical and methodological problems, branch of law, legal system, environmental law, state environmental control.*

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