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CONTEMPORARY ISSUES OF THEORY AND HISTORY OF STATE AND LAW

UDK 340.12:008

N. F. Golovchenko

CULTURAL FUNCTION AS AN INTEGRAL COMPONENT OF THE IMAGE OF THE MODERN STATE

In this chapter it is shown that the cultural function refers to the permanent core functions of a modern state is closely connected with other functions of the state.

The system of state functions is investigated from the perspectives of different approaches (anthropocentric, holistic, anthropological). The peculiarities of internal and external functions for different States.

Classification of state functions proposed on the basis of different criteria. The classification of the functions of the state allocated in the spheres of public life. Features cultural functions considered in historical context.

It is proved that the emergence of new or the transformation of previously existing functions of the state due to the strategic directions of its activity, oriented on satisfaction of needs of a particular civil society and the challenges of time.

External functions are closely related to the internal functions of the state. Their implementation contributes to the full functioning of the state in the modern world that is increasingly characterized by the interdependence of States.

After completing the analysis of existing classifications, the author classifies the internal functions of the States: economic, human rights, social, fiscal functions, law enforcement, or the function of law enforcement), environmental (or ecological), cultural (spiritual) functions, the information function (organization and ensuring of the system of obtaining, use, dissemination and storage of information). The external functions of the state include: function security, the function of international cooperation and integration into the world community.

Concepts of culture and cultural policy were delineated. It is proved that the special importance of the relationship of cultural functions with such functions of the state, as a function of economic, informational and communicative function, social function, law enforcement and human rights functions. The proposed definition of culture from the standpoint of axiological and anthropological approach and considering the concept of the aesthetic state.

Keywords: *cultural function of the state, modern society, cultural policy, cultural rights, internal functions, external functions, humanitarian functions, economic functions, system of state functions.*

KEY ASPECTS OF CONSTITUTIONAL AND ADMINISTRATIVE LAW

UDK 347.77(045)

I. M. Bilous

PROTECTING INTELLECTUAL PROPERTY RIGHTS: UKRAINIAN AND FOREIGN EXPERIENCES

The article is devoted to the problems of intellectual property rights in Ukraine. Providing the proper level of protection and security of intellectual property rights is a requirement of the European Union membership. The state system of legal protection of intellectual property rights is necessary for effective creation and use of the objects of intellectual property rights. The author analyzes the causal complex of violations in the sphere of intellectual property rights, enumerates the main violations of intellectual property rights in Ukraine, mentions means of state protection of individuals and legal persons' rights in the sphere of intellectual property rights on the basis of the analysis of foreign countries' experience and points at normative legal documents, which regulate jural relationships in the sphere of intellectual property rights in Ukraine. The author believes that the most effective means of state protection of individuals and legal persons' rights in the sphere of intellectual property rights include enhanced punishment for the violation of intellectual property rights, increase of level of culture in the sphere of intellectual property rights, adaptation of national legislation to the one of European Union. Besides, it is necessary to take effective measures concerning prevention and elimination of violence in the sphere of intellectual property rights. Analyzing the peculiarities of foreign experience, Ukraine should adopt positive experience of state support of innovating enterprises of developed countries, which hare in the lead in international ratings.

Keywords: *intellectual property, legal protection of intellectual property, objects of intellectual property, copyright, piracy, fakement.*

UDK 347.77(045)

Y. V. Hodovanyk

THE THEORETICAL APPROACHES TO DEFINING THE LEGAL PROVISIONS IN THE CONTEXT OF MODERN LEGAL SYSTEMS

This article is devoted to the problems of determining the legal standard as a basic element of modern legal systems that ensure proper operation. The author analyzes the major methodological approaches to the content of the legal norm in modern conditions of social and legal development. The attention on the features European thinking and interpretation of legal norms in dialectical relationship with the modernization of other structural elements of the legal system of a developed society.

Agreeing with the generally accepted approach to legal interpretation of the definition of «norm», we note that while the rule of law is the measure of justice, truth, respect for human rights in society, which together are essential features of the modern constitutional state, so full disclosure of the concept of «legal provision» from this point of view should partially cover and the second providing values which considers norm as «established as» a key position to further develop methodologies for evaluating the effectiveness of implementation of law in society, and this measure is set at the same amount for each

member of the relevant society is a kind of «litmus test» state legal of public relations and general classification of certain state categorized as legal, because the state has not only formally establish the rule of conduct, but also to ensure its legal nature, compliance with core values of the society, which inevitably based on full perception and practical implementation of the fundamental social and legal notions of natural rights, their absolute rule, inalienability and inalienability in the formation of the national legal system. In other words, by direct analogy with the medical definition of the «norm» in public relations legal rule rightly regarded as a postulate perfect society, the state and legal regulation of social relations.

Keywords: *legal norm, legal system, legal understanding, public relations, legal regulation.*

UDK 342.72-053.67(045)

N. M. Zapolska

THE THEORETICAL AND PRACTICAL ASPECTS OF DETERMINATION OF YOUTH LEGAL STATUS

The article is devoted to legal research of theoretical and methodological aspects of the legal definition of the category «Legal Status of Youth» as a specific set of rights, freedoms, responsibilities and legitimate interests of the young person.

It is alleged that at the local level youth enjoys legal modus as the subject of municipal law relations and a set of territorial communities with a special amount of municipal rights and guarantees of security in the system of local government.

Thus one of the most important rights of young people that make up its legal status should be considered a right of young people to participate in solving local problems, because the formation and development in Ukraine of local democracy is seen one of the most important social, political and legal factors improving democratic state, an important means the formation of civil society at the local level. In particular, one of the important features of the legal status of young people perceived need for enhanced legal protection of the legitimate interests of the young person as a member of a territorial community in modern conditions of municipal law and local democracy.

The question of the substance of the term «legal status of youth» is seen very relevant in the current development of legal science as provides a conceptual analysis of the constituent elements and importance of this category both in terms of constitutional law as well from the standpoint of the study of representations of general theory of legal rights of the content of the legal status of the subjects of legal relations in the relevant national legal system.

In this approach there is a need for significant improvement of theoretical concepts concerning doctrinal understanding of personal, legal mode of youth at the municipal level, the development of new legal structures that meet modern conditions of social life.

It is hoped that defined the theoretical and methodological design of legal status and legal modes of local youth will be properly foundation for further research and scientific and practical study of the question of the legal content of the legal status of young people, the role of local government in providing certain elements of the status of municipal law approximation of national European legal standards of local democracy and the rights of members of communities in modern conditions of social life.

Keywords: *legal status, youth, community, identity, legal modus, local government.*

UDK 382.77(045)

A. S. Kalinkin

CURRENT STATE CONSTITUTIONAL REFORMS IN DECENTRALIZATION GOVERNMENT IN UKRAINE

The article deals with the problems of the current state of constitutional reform to decentralization in Ukraine. The author analyzes the impact of European standards organization and activities of public authorities in processes of strengthening the role of local communities in addressing social issues. Identifies ways to improve the balance between the branches of government and between the various levels of public authority, including - at the level of relations between the state and municipal authorities in modern conditions of state law and constitutional development of public relations.

In the context of management and the management of the public authorities, it should be noted that decentralization can not be narrowed to the territorial organization of the decision to exclude her from the structure of executive power, because it is inherent in the whole system of democratically organized public authorities. Decentralization describes the transformation mechanism of realization of powers in government, which consists of the control subsystem (control subjects) and controlled subsystem (facilities management), and the constant interaction of subjects and objects of management.

At the level of functioning of state and government institutions in terms of broader constitutional reform decentralization should be understood as complex constitutional and legal and industry legal process of transferring powers of public authorities from the state to regional and / or municipal level with a view to the fullest to ensure effective implementation of the rights and legitimate interests of citizens - members of local communities through as close to the communities of financial resources, material and technical base of power, administrative services, methods of protection and redress.

Keywords: *constitutional reform, constitution, constitutional order, decentralization, public authorities.*

UDK 343.228

B. M. Orlovskiy

COMPARATIVE GEOGRAPHY OF THE NECESSARY DEFENSE IN THE LEGISLATION OF REPRESENTATIVES OF HYBRID LEGAL SYSTEMS

The article investigates the criminal law norms about necessary defense in the criminal legislation of the representatives of hybrid types of legal systems (mixed, religious and socialist law). The author investigates criminal legislation of such countries as: Japan, Sweden (mixed system of law); Korea, People's Republic of China (the socialist system of law); State of Israel and the Islamic Republic of Iran (the religious system of law).

The relevance of this study is due to the possibility of further use progressive foreign experience in the criminal legislation of Ukraine, with proper theoretical justification.

The author conducted a comparative legal analysis of fixation the necessary defense as legitimate act in the foreign countries on the following criteria: the title; the location; a form of implementation; the system objects of the protection; the legal basis of application. Based on conducted comparative legal analysis the author makes the appropriate generalize findings, in particular about that: 1) the concept of necessary defense in the countries of hybrid types of legal systems can be formulated in a narrow («Self-defense» - Criminal Code

of the Swedish, Criminal Code of the Republic of Korea) and in a broad sense («Necessary defense» (Criminal Code State of the State of Israel), «Legitimate defense» (Criminal Code of Japan); 2) a form of implementation of the necessary defense in the legislation of the representatives of hybrid types of legal systems is generally characterized across «acts (act)» that: «inevitably necessary» (Criminal Code of Japan), «inflict the harm» (Criminal Code of People's Republic of China), «needed an immediate order» (Criminal Code of the State of Israel). Only in the legislation of the Islamic Republic of Iran, they are defined as «crime to defense»; 3) the formulation of objects of the protection at the necessary defence in the representatives of hybrid types of legal systems are in the main more extended, for example, «the state interests, the public interests, the person, who defending or the other persons, their property and other rights» (Criminal Code of China), «the life, the liberty, the body or property of someone who defends or of a another person» (Criminal Code of the State of Israel); 4) the grounds of the necessary defense in such countries may be formulated differently and defined as «unlawful attack» (Criminal Code of Sweden), «inevitably unfair infraction» (Criminal Code of the Republic of Korea), «unlawful encroachment» (Criminal Code of China) etc.

Keywords: *necessary defense, legitimate defense, self-defense, preventive action, unlawful assault, unlawful encroachment, act.*

UDK 349.2 (477)

L. Ostapenko

LEGAL REGULATION OF SOCIAL DIALOGUE INSTITUTE IN UKRAINE

Nowadays labour relations appear to become a substantial part of our everyday life. An intention to reform and renew the attitude of employers, employees and legal entities towards their labour relations that unites the mentioned subjects within the frames and conditions of market economy is a topical issue for the ukrainian society.

Ukrainian legislation in force regarding labour relations is valid in most cases but considering rules of soviet union period. Such a fact brings disharmony into labour relations, especially into the part of labour protection right, right to achieve adequate compensation for work, right to social protection and right to labour protection.

One of the most efficient tools to regulate these kinds of relations is maintenance of social dialogue between the subjects of labour relations.

The entire process of social dialogue implementation in Ukraine starting from the independence period may be characterized as a failure attempt to regulate a newly developed market relations with the help of partly valid rules of soviet labour law and freshly adopted rules that guarantee relations of social partnership.

The evolution of labour relations lasting more than 25 years demands to outline precise rules of conduct between the employer and employees who produces material goods and administer power in a field of economics.

Contemporary approaches to the labour relations regulation foresee the practise of social dialogue on the basis of tripartite social partnership model which in its turn implies active participation of state in negotiations between the subjects of labour relations, and also in labour dispute settlement.

The existing legislation that regulates social dialogue between the parties of labour relations remains dominant in a process of labour rights and freedoms protection of both employers and employees and, despite certain loopholes in law, affects their social protection in a positive way.

Key words: *labour, employment, social dialogue, social partnership, labour disputes.*

UDK [342:327](477)(045)

S. V. Papayani

PECULIARITIES FUNCTIONING OF INSTITUTIONAL SYSTEM OF CONSTITUTIONAL-LEGAL MECHANISM OF UKRAINE'S FOREIGN POLICY

The article considers the constituent elements of the foreign policy mechanism, which primarily reflect the prevailing system of hierarchy and state authorities vested with appropriate powers. The article outlines the peculiarities of the such mechanism's structure, including institutional and legal components. Particular attention is paid to the institutional component, which form the state bodies realizing foreign state functions. Determined importance of a clear division of powers between the foreign state bodies, and legal regulation, efficiency and coherence of functioning the whole mechanism of the state external relations.

Regarding the institutional component, noted that its shape public bodies that implement foreign state functions. Among them, the highest state authorities (President of Ukraine, Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine); specially authorized executive authority in foreign policy (Ministry of Foreign Affairs of Ukraine); Ukraine foreign diplomatic missions (embassies, consulates, missions, representatives to international organizations); other authorities vested with competence in external relations (Ministry of Economy, Ministry of Justice, Ministry of Defense, the General Staff, Security Service, Foreign Intelligence Service, etc.).

Every public authority has the specific, peculiar only to him authority has appropriate material and financial resources, the combination of which allows us to implement foreign policy. Determined that the importance of a clear division of powers between the foreign state bodies, and legal regulation, efficiency and coherence of functioning of the whole mechanism of external relations of the state. Therefore, implementing balanced and consistent foreign policy of his country needed a clear and consistent operation at all levels.

Key words: *foreign policy, constitutional and legal mechanisms, institutional system, external bodies.*

UDK 342.7(4)(045)

Y. S. Khobbi

REGULATION OF HUMAN RIGHTS IN THE CONSTITUTIONS OF UKRAINE END EU COUNTRIES: COMPARATIVE ANALYSIS

The article analyzes the provisions of the Constitution of Ukraine on human rights in their compliance with the constitution of EU member states, to facilitate deeper harmonization of Ukrainian legislation with European law.

Based on this analysis, we can talk about the certain gaps in the Constitution of our country, which can be removed during the constitutional reform. This is especially true of bringing human rights provisions in line with the basic international treaties in this field, the disclosure of the content of each right and establishing an appropriate duty of public authorities in this area, it is appropriate to split these rights for certain groups, as is done in the Constitutions of the Slovak Republic and Poland, separately allocate responsibilities, focusing on the more vulnerable people as people with disabilities and the elderly. Furthermore, we must review what rights apply only to citizens, and that can be distributed to all categories of the population.

It is necessary to provide a specific duty of public authorities to ensure and guarantee human rights indicating a clear list of conditions of their temporary restriction with the definition of penalties for abuse of the state in this area.

Keywords: *constitution, human rights, international treaties on human rights, the right to peaceful assembly, the right to social security, restriction of human rights.*

MODERN PROBLEMS OF LOCAL GOVERNMENT IN UKRAINE

UDK 352.07.001.73(045)

Y. V. Boyko

THE PROBLEMS OF REALIZATION OF THE MUNICIPAL REFORM IN THE CONTEXT OF ESTABLISHING UNITED COMMUNITIES: CONTEMPORARY APPROACHES AND PROSPECTS

The functioning of local government in the majority of communities do not provide creating and maintaining a favorable living environment necessary for the full development of man, his self-protection of the rights of communities to provide residents quality and affordable public services based on sustainable development viable community. Given these problems, including the empowerment of local communities greater resources and mobilize their internal resources all become more important, which is due to theoretical and practical importance of issues related to small voluntary association of communities of villages, towns and cities so that they were able.

In Ukraine Territorial Communities Association is subject to the Law of Ukraine «On voluntary association of communities», which involves the formation of a real subject of local self-government of territorial communities, which would have the necessary financial and material ability to solve local issues. However, it is important to consider that change the territorial structure of the state is possible only by amending the Constitution of Ukraine and adoption of the Law «On Territorial System», which is to resolve the issue as the organization and functioning of public authorities and local governments. Therefore, it is imperative for decisive steps towards reform in the first place to conduct constitutional reform, amendments to the Constitution of Ukraine.

Keywords*: local government, municipal reform, administrative-territorial reform, local community association communities.*

CURRENT PROBLEMS OF FINANCIAL, CIVIL AND ECONOMIC LAW AND PROCESS

UDK 347.191

R. V. Kolosov

MODERN VECTORS AND DIRECTIONS OF CORPORATE LAW DEVELOPMENT IN UKRAINE

In this research attempt to give definition of corporate law, to find out its conceptual bases and to analyze its place and a role in the legal system of Ukraine. The relevance of the article based on the fact that corporate law is a relatively new phenomenon, not well covered in the domestic legal jurisprudence.

The article provides comparative characteristics of the major theories and scientific views on the definition of corporate law. For the solution of this task the corporate law is considered under a different corner and in different aspects, in particular: as the branch of the right, complex branch of the of law, branch of the legislation, as a sub-branch of law or as a cross-cutting legal institution. The paper also analyzed scientific positions, in which corporate law is studied as part of another branch of the law, namely the economic, commercial, enterprise and civil. Determines the author's position on the issue and determines the direction of further research of this problem. In the end of the work, the author made a number of practical conclusions, allowing to determine the place and importance of corporate law in the legal system of Ukraine.

Keywords: *corporation, corporate relations, corporate legislation, corporate norms, corporate law, corporate management, object of corporate law.*

MODERN TRENDS OF THE DEVELOPMENT OF INTERNATIONAL LAW

UDK 341(045)

V. V. Gavrylenko

THE PROBLEMS AND PROSPECTS OF NATIONAL SOVEREIGNTY IN THE FACE OF INTEGRATION ASSOCIATIONS WITH ELEMENTS OF SUPRANATIONALITY

The article deals with the problems and prospects of national sovereignty in the face of integration association with elements of supranationality. The author analyzes the forms and methods of sovereign rights by public authorities of member countries of the European Union. Separately interpretation indicates the feasibility of voluntary transfer of certain sovereign powers of the EU as a common form of implementation of its own sovereignty in today's radically new political and legal conditions.

Thus, in practical terms representative sovereign foreign policy functions both in

Ukraine and in most EU Member States performing head of state, but in absolute dualistic monarchies, presidential and much of mixed republics - directs foreign policy, thus leading executive in presidential republics and absolute monarchies.

However, in today's national legal systems growing role of Parliament in the practical implementation of the sovereign rights of the state, especially considering adding to postwar constitution rules on ratification of international agreements as exclusive competence of Parliament, allowing state approval and strengthening developed parliamentary as one of the main features of contemporary European constitutionalism and the necessary prerequisites for implementation of the national state sovereignty and national sovereignty as the source of all integrated set of sovereign powers.

Keywords: *state sovereignty, supranationality, European Union, limit of state sovereignty, sovereign rights.*

CURRENT ISSUES OF LAW ENFORCEMENT, CRIMINAL PROCEEDINGS AND FORENSIC SCIENCE

UDK 342.5(045)

V. A. Mykolenko

THE FEATURES OF THE LEGAL STATUS OF HEAD REGIONAL PROSECUTOR

The article deals with the problems of improvement of the legal status of the head of the regional prosecutor's office in modern conditions of reforming the prosecution Ukraine. The author analyzes the functions and powers of the regional prosecutor, his major tasks during system implementation of state law enforcement policy. The necessity of ensuring the rights and freedoms of man and citizen as the most important direction of the prosecutors in the context of perception national legal system Ukraine European legal standards.

Specifies that the dispersion of the law in different areas of law, different legal sources (legal acts) sometimes complicates the search and selection of a specific legal standard to be applied. The Law of Ukraine about Prosecution contains only general provisions and organization of prosecutors and prosecutors at all levels, has many other rules and regulations. Most of the activities of the organization and the prosecution, prosecutor's status are regulated by departmental regulations and, in particular, orders of the Prosecutor General of Ukraine. In this connection, the prosecution as a public education system that has its internal structure is not stable enough and is often subjected to unreasonable transformation. Canceled prosecutors entire species, some parts of the judicial system, with proven positive side, and at the same time founded the prosecution had not known the historical experience of the national prosecutor's office. Some questions of the organization and activities of all prosecutors remain unresolved until the end and their activities are carried out spontaneously from the prosecutor's system gained experience. For example, detailed form of such acts as prosecutor to protest filing and is not legally established and worked in the prosecution of years of practice.

The legal status of the prosecutor can be defined as regulated by law provisions Prosecutor appropriate level, in society and the state, endowed with a set of powers for the implementation entrusted to him by law functions to ensure the legality, acting on the basis

set out in law the principles and independent status which is provided with special means legal protection and legal basis for the organization of prosecutor and law are contained in various legal acts in force in the state, and governing the organization and activity of organs.

Keywords: *regional prosecutor, prosecutors, prosecution functions, tasks of prosecutors, law enforcement.*

UDK 343.1

Y. M. Myroshnychenko

THE CASE OF OBJECTIVE TRUTH AND ADVERSARIAL NATURE OF THE JUDICIAL PROCESS

Having analyzed the legal literature and active legislation the author concludes that publicly-adversarial judicial process existing in Ukraine, Russia and other countries with common or similar history of administering justice, undoubtedly provides for establishing the objective truth in the judicial process through the impartial and fair trial. The key element of efficient judicial procedure is a reasonable balance between private and public interests, facultative and formal basis, adversarial and finding basis in criminal procedure.

The concept of the objective truth correlates with the origins of adversarial proceedings, which is evidenced by the findings of theoretical research and current legislation, where system analysis of its provisions shows that the establishment of the objective truth is the aim of proof.

Keywords: *criminal process, competition, objective truth.*

TRIBUNE OF YOUNG SCIENTIST

UDK 343(045)

A. V. Gichkin

NOTARY PROPERTY RIGHTS, CONSTITUTIONAL-LAW ASPECTS

In the article the constitutional and legal aspects of ownership notary public, and proved that the notary and within its competence performs the duty of the state to ensure human rights and freedoms. It follows that the notary provides not only the rights of persons who applied for a notary action, and the rights of all persons, rights and interests where such action relates focused on the fact that the notary protects not only the right but also the interests, as they is an independent subject protection and security.

Established that the legal aid by the notary, by setting the real intentions of the participants of the notary, clarification of rights and obligations, consulting is the primary legal aid.

It is noted that notaries protects the rights and interests of individuals, preventing possible violations, especially the right to property. Acting on behalf of the state notary is not subject to power because it does not contain the required instructions to others, and has no power. These circumstances characterize the status of notaries. In connection with notarial acts, a notary shall apply the substantive and procedural law, affecting the relationship

between persons carrying legal function. During the application of the law notary are some gaps, inconsistencies in the law that need to be addressed. Therefore, notaries can affect lawmaking.

Thus, the relevance and timeliness of the article is that the protection of property rights by the notary in the civil and legal aspects examined thoroughly, but the constitutional aspect of such protection requires more careful consideration in legal science.

Making the most of the notary embodies legal aid in the process of execution and provides the likelihood of legal notarial act, ensuring the inviolability of property rights and reduces the risk of violation of rights and interests and seeking their protection in court.

Keywords: *ownership, rights, legitimate interests, limiting the rights, notaries.*

UDK 347.77(045)

A. V. Gorodovenko

HISTORICAL-LEGAL ASPECTS OF FORMATION AND DEVELOPMENT OF UKRAINIAN JUDICIARY

Relevance of the chosen research topic of historical and legal aspects of the formation and development of the Ukrainian judicial system due to the fact that at the present time, at the turn of judicial reform is important to analyze the historical and legal processes in the judiciary, since the intensification of the processes of implementation of European legal standards judicial system and justice is about ' subjective factor reference implementation of a modern model of judicial protection of rights and freedoms in the context of the signing and implementation of the Association agreement Ukraine and the European Union. These fundamental processes in society and the state there is a need to careful scientific analysis of the actual capabilities of modern Ukrainian society and the national legal system to adapt to radically new conditions for the functioning of all the important elements of the legal system. In this formulation, designated by issues considered first.

Analysis of the sources of law of different periods of history makes it possible to identify periods in the development of local general courts in our country. The turning point in this process is to establish Ukrainian Soviet power and the independence of Ukraine in 1991. In order to take account of these circumstances distinguish three major periods of local general courts: pre-Soviet, Soviet and modern.

Now, at the turn of judicial reform is important that the rules are implemented in national legislation did not destroy the judiciary.

In summary, it should be noted that the development of the judiciary in Ukraine should move away from the principles of totalitarianism and based on European principles of law, justice, humanity, impartiality and independence of the court, which will ensure the exercise of justice inherent in a democratic state.

Keywords: *court, justice, judicial system reform, constitutional modernization.*

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