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THEORY AND HISTORY OF STATE AND LAW

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FUNCTIONS OF LAW: SUBSTANTIVE AND THEORETICAL ANALYSIS

The essence of the law and its purpose in society is directly related to its functions. The function of law is a manifestation of his inherent, specific qualities in other words is the basic right to influence the direction of public relations for the purpose of ordering and settlement.

Among the qualitative characteristics of the functions of law above all, in our opinion, deserve attention are:

1) function law due to its essence and determined purpose in society. At the same time function is not only a manifestation of the inherent qualities of nature, it cannot be considered only as their «projection». You cannot function mechanically connect the essence of law; function of law has a certain degree of independence;

2) the function describes the direction desired impact of law on social relations, that such effects without which society at this stage of development cannot exist (regulation, protection, securing certain kind of public relations);

3) function expresses the most significant, the main features of law and aims to implement indigenous tasks facing right at this stage of its development;

4) the function of law is usually the direction it is active. So one of the important features is its dynamism;

5) the constancy of sign functions as a necessary law characterizes the stability, continuity, very prolonged effect.

The function always inherent law, but this does not mean that the mechanism remain unchanged and forms of work, changing and evolving to meet the needs of practice.

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MILITARY DEMOCRACY AS THE TO STATE FORM OF SOCIAL MANAGEMENT AT THE GLOBAL AND NATIONAL HISTORY

Go to the class of primitive society began with on a democratic basis, has long been known in history. Then direct democracy in communities of farmers, ranchers, hunters and fishermen stood in the face of military democracy. Through it passed most of the world. Military democracy had to merge together three required structural elements of objective reality – military leader who could be given more and judicial powers, the national assembly and council leaders. It was something like three independent branches that make up today mod democracy.

The National Assembly, any member who also served as a soldier, was as important and necessary authority as council leaders and, indeed, the very military leader. No matter what political line adhered society, no one had any means of violence or coercion against other members of the military and democratic society, in addition to traditions, customs and personal authority in the common people. Thus, it is clear that the military democracy – a social system transition from primitive society to the state is the majority of the world.

The term "military democracy" was introduced to the scientific use American scientist LR Morgan to refer to the organization of power in ancient Greek society in the primitive stage of decomposition system. Lewis Henry Morgan (1818–1881) – anthropologist, sociologist, historian of law, the creator of the scientific theory of primitive society, one of the founders of evolutionism in the social sciences.

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JUSTICE AND LEGAL LIABILITY

Considered the problem of justice in the law, justice as a principle of law and legal responsibility the ratio of principle of justice and other principles of legal responsibility.

The problem of Justice in law, its relationship to law in General, and in particular from the legal liability has been and continues to be relevant for countries with established socio-economic and political systems, and for those countries that are still in the process of establishing their statehood and to create its own legal system.

Social justice in the modern science is regarded as one of the most important principles of law.

Social justice is a system of public institutions, which is not in single combat but by its structure constantly provides a majority of the members of the society, benefits in the distribution of political, legal, economic and other rights and property.

The principle of equity is a generalized description of other principles and disclosed it is the principle of social justice through other principles of legal liability.

In a modern democratic society, the principle of Justice in legal responsibility is understood as an idea, key start, set forth in the regulations providing for the legal responsibility of equality, respect and protection of human rights and freedoms under the law, the moral categories of reasonableness and good faith, taking into account a hierarchy of personal, public and State interests, and in particular through the rest of the principles of law and legal liability.

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ONTOLOGICAL BASIS CONCEPT OF STATE

Characteristics clear, understandable ontological basis (or Monad) concepts that would meet modern requirements and analyze the most significant perspective capabilities of domestic society is vitally necessary task scientist. Claimed consider the problem in the following order: first, to identify organizational, schematic, signification preconditions or context in recognizing "the State"; secondly, the isolation synonymous terminology, concepts that form the range of "state" and their classification; thirdly, installation accessories ontological "state".

The concept of the state, subject examined synonymous concepts and their ranks are artificial complex social phenomenon, which, in its content has always been exclusively public social nature of being in a social organization, regardless of various forms and types of organization. Publicity is a reflection of the general idea, the whole, a single, uniform, which in terms of the whole society taken for granted, then the problem is relatively safe development takes specific content, as well as the implementation of group and individual interests. Any violation of publicity (or state publicity) minimizes or destroys integrity.

The state as a public organization, are subjects of public relations, but special subject, as other subjects of public relations acquire this status will state. Oriental-generalized idea of the state, despite the diversity of approaches is to control the absolutism of political power.

The public nature of the state encourages the development of legal principles and legal differentiation or legal action which degree relative of a society is different, which is a consequence of compliance with state publicity as safe conditions of society.

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THE SOURCES OF MUSLIM LAW

The main sources of Muslim law have been studied in the following article. Such sources as Koran, Sunnah, ijma (consensus), kiyas (measurement) have been compared and analyzed properly. The attention is focused on the general Islam's influence and additionally, the influence of Muslim law on the state legal development of Islam states.

The goal of the research is to determine the main specific sources of the Muslim laws.

The author has underlined, that Muslim law is specific law doctrine, which has been formed during 13 centuries of existing Islam religion. The mentioned principal is a part of socioreligious Islam outlook, which is characterized with a specific approach to the understanding of the law rules and law system in general, because it is connected inseparably with the religion dogma.

The author has marked, that Koran, Sunnah, ijma (consensus), kiyas (measurement) are the main resources of the Muslim law.

Also, we should pay attention to the fact, that Islam countries differ one from another as in socio-economic sphere as in politics. Surely they differ in the size and intension of Islam influence generally and Muslim law on their state-legal development. The role which is given to Muslim law in legal environment, in politics and ideology of East countries, shows, that it has enough strong possibilities in new historical situation.

CONSTITUTIONAL LAW

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CRIMINAL LIABILITY FOR VIOLATION OF ELECTORAL AND REFERENDUM RIGHTS OF CITIZENS

Criminal liability is envisaged for the most serious offences in the sphere of electoral and referendum law. Severe penalties are designed to prevent and stop the active actions of the perpetrators, in fact, directed at undermining the constitutional order.

The domestic legislator provided a list of ways to commit obstruction of a citizen in the electoral and referendum law. They are violence, threat of violence, coercion, bribery, deception, destruction or damage to property, threat of destruction or damage to property. Part 1 of article 160 of the criminal code contains a definition of “impeding the other way”, which indicates that an inexhaustible list of ways to prevent citizens from exercising referenda rights.

However, it is not enough to stipulate liability for violation of the electoral and referendum legislation and to appoint a court that will exercise control over its observance. We should reform the legal consciousness of citizens and to orient it to the new principles of the organization of the political life of the state. Only under such conditions of high legal culture will form the basis of the constitutional reform of state-building.

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PROBLEM OF INDEPENDENT INVESTIGATOR

The article reveals the problems of improvement of the status of the investigator and the optimization of the pre-trial investigation taking into account the actions of the new Criminal Procedural Code of Ukraine of Ukraine and legislation on investigative bodies.

Ensuring the independence, objectivity and impartiality of the investigator, creation of reliable guarantees of its proper important meaning for problem solution establishment of truth and protection of human rights in the criminal process, implementation of justice in general.

Attempts separation of investigation function from administrative power and strengthening of independence of investigator were made at different historical stages of rights development but not easily implemented and not finished solving the problem fully. Overcoming of corruption in the country needs more active activity of investigative units which is necessary to ensure its independence from officials of both the executive and the legislative and judicial branches of government.

It is needed to strengthened radically guarantees of investigator by setting such rules: investigator of any agency should be appointed to office and quit only by the President of Ukraine on the proposal of the Prosecutor General of Ukraine and agreed with Parliament Commissioner for Human Rights. Untouchable investigator, criminal proceedings against of investigator may be initiated only by the court on the proposal of regional prosecutor or prosecutor of higher level. Investigator considered active in condition of risk and is not subject criminal, civil or other liability in connection with court's recognition of its illegal decisions, if it were not admitted abuse of power by investigator.

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CONSTITUTIONAL AND LEGAL STATUS AND LEGAL REGIME OF ALIENS AND STATELESS PERSONS IN UKRAINE: RATIO OF CONCEPTS

Article is devoted to revealing the concept, content and ratio of constitutional-legal status and legal regime of aliens and stateless persons in Ukraine as a separate, but interrelated legal categories.

Based on the analysis of leading scientific concepts, norms of the Constitution of Ukraine and legislation concerning the regulation of the status and legal regime of aliens and stateless persons in Ukraine proved that these concepts, although closely related, but not identical. Notes that the legal status of aliens and stateless persons is determined by the complex logistical and legal norms that govern the relevant relationship is essentially a legal regime designed to ensure implementation of their legal status. The author recognizes the legal status of foreigners and persons without citizenship complicated legal Institute, structure which consists of separate independent interconnected statuses: 1) constitutionally the legal status of foreign citizens; 2) constitutional legal status of stateless persons; 3) constitutional and legal status of refugees; 4) constitutional and legal status of foreign Ukrainians; 5) constitutional legal status of aliens in Ukraine.

Concluded that constitutionally the legal status of aliens and stateless persons, as established by law, the totality of their rights and obligations and guarantees their security is the statics of legal regulation of the position of these persons in Ukraine.

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FORMS OF PROTECTION OF ELECTORAL RIGHTS OF CITIZENS OF UKRAINE: THEORETICAL OVERVIEW

In the study of the forms of protection of electoral rights of citizens of Ukraine is a very important task is the separation of the concepts of implementation, warranty protection, protection of electoral rights, which are often used in legislation and scientific literature.

The exercise revealed as the behavior of the subjects of rights, which are embodied prescription legal requirements and practical activity of people on the implementation of legal rights and the fulfilment of legal obligations. Implementation of rights and freedoms can be expressed in the form of actual enforcement, use, management or protection – restoration of rights in case of their violation. Protection of electoral rights can be seen as a coercive mechanism of realization of the rights of Ukrainian citizens to elect and be elected to bodies of state power and bodies of local self-government provided by inter-governmental organizations, public authorities, municipal authorities, their officials by preventing violations of electoral rights, elimination of barriers to their implementation or restoration of violated rights.

Forms of protection of electoral rights include: the restoration of voting rights; termination of action (inaction) or cancellation decisions that violate electoral rights; the involvement of the subject, actions (inaction) which led to the violation of the electoral rights to legal liability.

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REFORM OF THE SYSTEM OF NOTARIES

Everyone's right to get legal assistance is a fundamental and guaranteed by the Constitution of Ukraine law, which provided both through the public authorities, and through the institutions where the state legislation empowers the appropriate authority. Today, as an important legal institution Notary adopted as an institution whose main objective in statutory limits on notarial acts is to ensure the realization of this right.

Thus, the issue of improving the system of professional development in Ukraine is one of the main directions of reforming the state, which is carried out in accordance with international practices and in accordance with clearly defined standards, adapted to European.

The effectiveness of notaries as the system agencies and officials entrusted with the duty to certify the law and the facts of legal significance, perform other notarial acts, by law, to provide them with legal validity, largely depends on the recruitment, are not only professionally, but also ideologically prepared for professional and competent, creative work. Because insufficient level of professional knowledge, practical skills and knowledge of public and private notaries, notaries public archives and other officials authorized to perform notarial acts, as well as those that provide notarial activity (consultants, assistants), only partially compensated by teaching in schools of professional development.

ADMINISTRATIVE AND FINANCIAL LAW

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OBJECT OF ADMINISTRATIVE AND LEGAL PROTECTION AS A BASIC ELEMENT OF THEIR LEGAL STATUS SECURED BY APPROPRIATE GUARANTEES FROM THE GOVERNMENT

The scientific paper analyzes the basic element of administrative and legal protection of human rights. The rights of citizens are being considered as an object of administrative remedies.

Crucial in this case becomes reality of human rights at the level of legal recognition of rights and effective implementation mechanisms, also provides the effectiveness of judicial and administrative protection, under what science understands that judicial and administrative decisions and take effect realized that necessarily led to the restoration or compensation of violated rights and freedoms.

The purpose of this paper is to identify ways of improving the administrative and legal mechanism for the protection of human rights in law enforcement Ukraine.

Thus, the rights, freedoms and legitimate interests owed to citizens of Ukraine, foreigners and stateless persons as a basic element of their legal status, provided that appropriate guarantees from the government, are the object of administrative remedies. Administrative and legal protection mechanism has an important place in ensuring the reality of civil rights as one of the key factors in the formation of law and civil society in Ukraine.

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SPECIAL PRINCIPLES OF THE LOCAL FINANCE MANAGEMENT IMPLEMENTATION IN UKRAINE

The principles of management are the prism management paradigm boundaries and the important component of management philosophy, generally. Principle of "publicity" should be considered as the fundamental one. G.V. Atamanchuk regards it as the wide access of citizens to participating in governance through the election of the relevant authorities and public control over their functioning, transparency of these bodies functioning, and judicial control over compliance management processes, the constitutional interests of society, the rights and freedoms of citizens. This approach to understanding the publicity prompted S.M. Klimova to state principle of publicity components which are developed in Ukraine. They are the cornerstone of public finance management: 1) the mechanisms availability of finance to the public; 2) openness or transparency in functioning of public authorities and local self-government bodies; 2) society's oversight the generation, use and distribution of centralized and decentralized funds; 3) judicial control over the formation, distribution and use of state and local finance.

The main principles of local finance management include the following: 1) independence; 2) state financial support; 3) the efficiency and rationality; 4) openness, publicity and transparency.

As it is well-known local self-government is recognized and guaranteed in Ukraine (art. 140 of the Ukrainian Constitution, Law "On local self-government in Ukraine"). Local self – governments have the right to make decisions concerning of local important affairs independently, especially in the sphere of financial sector. It is important that these bodies are financially independent (within certain limits) and they have the right to own budget, local taxes and fees, etc.

CRIMINAL LAW AND PROCESS

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SCIENTIFIC AND THEORETICAL ANALYSIS OF THE ORIGINS OF THE INSTITUTION OF THE CRIMINAL OFFENSE

Questions of legislative fixing of institute of criminal offense were repeatedly brought up in scientific literature. This question was discussed widely by the public.

Active discussion of the matter began with adoption of the Concept about reforming of criminal justice.

The main criterion of differentiation of offense and crime is public danger. Many scientists carry crimes of small severity to offenses and separate administrative offenses.

Realization problems in the criminal legislation of questions of responsibility for offenses and crimes are discussed at conferences and seminars.

Many scientists consider inexpedient introduction of criminal offense to the legislation. Actually offenses taking into account sanctions for their commission can be referred to crimes of small weight. And such look already found fixing in the Criminal code. Besides, sensitive differentiation of offense and a crime in the legislation it isn't given

Educations influenced on forming of criminal legislation. Before a criminal legislation a task to punish guilty and settle public relations is put. It assisted differentiation of criminal act. From XУIII of century there are changes in the criminal codes of most states of Europe. A criminal act was divided into misconducts and crimes. On modern Ukraine operated the Criminal code of Zonnenfelda and Criminal code of Poland in 1852. In these laws a criminal act was divided into crimes and heavy constabulary misconducts (guilt).

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ROLE OF SPECIAL-CRIMINAL PREVENTION MEASURES OF PENITENTIARY CRIME

The article deals specifically criminological, penal measures to prevent crime, discussed the basics of forms and methods of work of the personnel and penal institutions in such activities. Attention is focused on operational-search prevention as one of the most difficult but the most efficient and species penal crime prevention. Exposed positions scholars and practitioners about the problems of specially-criminological prevention of crimes in organs and penal institutions, and made some suggestions for improving the existing legislation in this area.

Purpose of the article is a criminological disclosure specially-penal measures to prevent crime and develop on this basis, forms and methods of personnel agencies and penal institutions in such activities.

Activities of personnel of penal offenses prevention among prisoners involves first identifying the causes due to these acts, and conditions conducive to their occurrence, followed by the development of measures to address these determinants. Moreover, such work may include both identify those which may be expected disturbances in the established order punishment and use them and preventive measures of educational influence.

It is concluded that an important role in preventing the commission of crimes convicts given to measures specially-criminological penal crime prevention in order to identify and eliminate the causes and conditions of crime and creating conditions that hinder or even preclude the possibility of their occurrence.

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QUINTESSENCE OF CONCEPT OF COVERT INVESTIGATORS (SEARCH) ACTION DURING CRIMINAL PROCESS OF UKRAINE

The article deals with the main issues related to the modern concept of conducting covert investigative (detective) actions in the criminal process of Ukraine. It is noted that the basis of the concept of conducting covert investigative (detective) action in criminal proceedings is the ideal model of theoretical and applied operational cooperation between investigative and criminal procedural activities.

Purpose of the article is to highlight the quintessence of the concept of conducting covert investigative (detective) actions in the criminal process Ukraine to settle the procedure of investigator, prosecutor orders an operational unit on the investigation (search) action in criminal proceedings.

In the article on the basis set out to optimize the interaction of the investigator, prosecutor with the operational units of solving crimes proposed construction of a separate article PDAs Ukraine to settle the procedure of investigator, prosecutor orders an operational unit to conduct investigative (detective) of action and NSRD.

The proposed concept includes a system of interconnected ideas (regulations), which appears nuances of the term "concept": some proposals represent only plan; second – leading idea; third – a new way of interpretation of the traditional concepts. However, all the provisions ultimately aimed at the study and ensure the efficiency of the new institute national criminal proceedings – NSRD.

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VICTIM IN CRIME THE OBSTRUCTION OF JOURNALISTIC ACTIVITIES

Category “victim” is reflected in the Ukrainian legislation recently. In the article the victim was considered of doctrinal and legislative positions. Victim in the media can be journalist – a creative editorial staff, who professionally collects, receives, creates and prepares information for print and acting on the basis of employment or other contractual relationship with the editors or engaged in such activities for its authorization, Broadcast journalist – staff or freelance creative officer of the broadcasting organization who professionally collects, receives, creates and prepares to distribute information and news agency journalist – a creative worker who collects, receives, prepares and provides information for the news agency and acting on his behalf under the employment or other contractual relationship with him or with his authorization.

Another victim can determine the media (print media (newspapers) – magazines, which published with the title one or more rooms during the year on the basis of the certificate of registration; broadcasting – a legal entity, which has the broadcasting license from National Council of Ukraine on Television and Radio, creates or completes broadcasting and (or) transfer and distributes them through technical means of broadcasting; news agencies – subjects of information activity, which provide information services), which are pressured in the form of illegal deprivation of TRC right to use certain frequencies designated for broadcasting; illegal revocation of certificate of registration of print media. Finally, the victim in this crime can be defined journalists’ close relatives if they are the subject of threats, blackmail and persecution.

INTERNATIONAL LAW AND LAW OF THE EUROPEAN UNION

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THE CHARACTERISTICS AND ESSENTIAL TERMS OF THE PRINCIPLES OF EUROPEAN CONTRACT LAW

It should be noted that the last two decades are characterized by high activity in the regulation of international trade. We can distinguish two main directions of legal regulation of international trade. The first is the use of conflict regulation method, the second unification of private international law, and especially international trade law. In recent years, an increasing attention is paid to developing acts of so-called non-normative unification: Principles of international commercial contracts as amended 1994 and 2004, and the Principles of European contract law as amended 2003 (Principles EAF).

And last, an important direction of development of contract law of Ukraine is its adaptation to European Union legislation. Economic integration processes require appropriate legal integration, in particular by the progressive approximation of legal support and property relations of the commodity nature in Ukraine to the conditions of the EU internal market, the legal framework and principles operating in this market, in order to achieve the combination with the law of the EU and member countries, and subsequently the harmonization and unification in some industries. This is especially contract law. But for Ukraine's entry into the legal space of the EU, in particular in the field of contract law should be carried out much work on updating of normative-legal acts in the areas of civil and commercial law, as well as transactional and litigation practice in the application of this legislation.

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EUROPEAN COMMISSION IN THE INSTITUTIONAL MECHANISM OF THE EUROPEAN UNION

European Commission – one of the main institutions of a supranational character. The leading place in the management of the affairs of the EU belongs to it. Commission often and quite justified referred to as the engine of European integration.

Under the Lisbon Treaty the general status, formation and structure of the Commission, bases of its competence and conditions of its functioning defined primarily in art. 17 of the Treaty on European Union and in art. 244–250 of the Treaty on the functioning of the European Union.

The main purpose of the Commission, and it reaffirms Agreement on the reform, lays in advancement and protection of the common interests of the EU. For this purpose the Commission shall take the necessary measures. All its initiatives serve to their achievement.

The formula of "common interest" is, of course, very vague. It can be interpreted in different ways. The general interest may be contributed by all EU Member States. In this case, you can focus on the decisions taken jointly by all the participants of the integration process.

Own a specific expression in relation to the Commission they find in the activity of the institution aimed at providing, consolidation and implementation of goals, objectives and the principles set out and guaranteed by the founding treaties. It is with this point of view is determined purpose of the given institution in the founding treaties.

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ELABORATION OF THEORETICAL AND SCIENTIFIC BASICS OF INTERNATIONAL LAW BY F. F. MARTENS

The object of the article – theory and history of international law, the subject – scientific works of F.F. Martens, where theoretical and scientific basics of international law are disclosed. The author made an attempt to reach the following goals: to reveal the understanding of subject, place and meaning of international law in the system of legal sciences in accordance with F.F. Martens views, to show his argument as regards concept, periodization, dual basis of international law, dialectics of controversial circumstances of its existence, social functions of international legal science.

Some authors assume that most important contributions of F.F. Martens are linked not so much with problems of theory and history of international law, but with practical elaboration of certain issues, particularly the issues of the law of war and international arbitration. This is not right. He was given 16 Russian and foreign awards for the fruitful public and scientific-pedagogical service, recognized by the European and Russian legal communities as one of the major authorities in the field of international law. His works were published in Russia and European countries, and were part of compulsory reviews of law literature. During his lifetime many authors devoted him their scientific compositions. F.F. Martens defended his views in hot polemics with representatives of various scientific institutions that set up trends in the European jurisprudence of that time. In the following scientific researches it is necessary to shed light on such problems as foundation of the basics of historiography and methodology of the international law source study put forward by F.F. Martens.

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