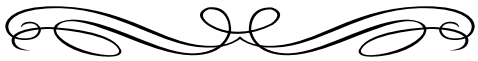
MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE
KHERSON STATE UNIVERSITY
FACULTY OF LAW

JUDICIAL AND INVESTIGATIVE PRACTICE IN UKRAINE



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The article is devoted to the certain issues of functioning of specialized courts in judicial systems of the common law countries and the use of experience of these countries in reforming the judicial system of Ukraine. The author of this study considers such countries as the Great Britain, Australia, Israel, the USA, New Zealand, Canada, and so on.

Functioning of specialized courts in studied countries of common law as a part of the legal system depends on a number of existing in such countries features that are primarily associated with the lack of division of the right into public and private, which is based on Roman law; wide use of such forms of law as legal customs, traditions, precedents, legal doctrine; using not a single basic law but the set of constitutional acts, legal precedents and customs; lack of courts of constitutional jurisdiction; high levels of discretionary and competition in legal proceedings and so on.

Thus, the common law system has a decisive influence on the formation of legal systems, generally in English-speaking countries (Australia) or countries where historically evolved relationships of dependent territories and metropolitan (Israel). In terms of judicial specialization it is necessary to state that the countries-members of the Anglo-Saxon legal family are characterized by the following features: 1) administrative justice agencies usually are called tribunals, which underlines their inferiority compared to the courts; 2) organization of specialized judicial authorities at the level of lower courts with the possibility of verification of their decisions either by the general court or the court of appeal instance; 3) lack of relatively independent judiciary verticals of specialized courts.

LAWYERS' ROLE IN PROTECTION AND PROVIDING LEGAL ASSISTANCE IN COURT UNDER THE LAW OF THE RUSSIAN EMPIRE AND MODERN UKRAINE: THE COMPARATIVE ANALYSIS

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This article contains a comprehensive comparative study of the role of lawyers in defence and providing legal assistance in court under the legislation of the Russian Empire and the modern Ukraine. Conducted research and comparison are necessary because they have not only historical and theoretical but also a practical character. The purpose of the article is a comprehensive research, multidimensional comparison, and analysis of features of legal assistance and defence tactics of lawyers in prerevolutionary Russia and independent Ukraine, identifying similarities and differences in the legal regulation of this issue.

In Russia until 1917 the theoretical issues related to the organization, establishment, and functioning of the legal profession were being studied in works of the following scientists: S.A. Andriievskyi, K.K. Arsieniev, Y.B. Vaskovskyi, I.V. Hessen, H.A. Dzhanshiiev, B.A. Kistiakivskyi, A.F. Koni, I.Y. Foinitskyi and others. Applied issues of modern development of advocacy are investigated in the works of D.P. Fiolevskyi, T.V. Varfolomieieva, S.Y. Fursa, A.A. Hevorhiz, V.O. Popeliushko and others.

Undoubtedly, an authoritative advocacy – is a serious stabilizing factor in society and state. Analyzing the limitations of the legal status of lawyers and the legal profession as a whole in the Russian Empire, it is concluded that fundamental positive developments have occurred in the status of the legal profession of independent Ukraine. In particular, now the lawyer is independent of both the court and state authorities, local governments and their officials. Law on Advocacy and Legal Practice greatly expanded the range of types of legal assistance, implementation of which is guaranteed by the law, and any influence and pressure on activities of the lawyer as a defender and representative of a person are prohibited. The Law on Advocacy and Legal Practice has many previously unknown to the Statutes of 1864 kinds of legal assistance and advocacy; it greatly expanded rights and guarantees of lawyers in protection and representation.

RESTRICTION OF POLITICAL RIGHTS AND FREEDOMS OF JUDGES: LEGISLATIVE REGULATION AND INTERNATIONAL STANDARDS

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Based on the comparison of current legislation and international regulatory acts the article considers shortcomings and gaps in the legal regulation of restrictions of political rights and freedoms of judges, justifies ways to address them, and formulates concrete proposals to amend the current legislation.

Today the national law provides a number of restrictions and prohibitions for members of the judiciary, which on closer analysis show their non-conformity to the practice current needs. Yes, some legal restrictions unduly narrow the scope of individual rights and freedoms of judges, while others use do not bring the expected result. In addition, there are contradictions between regulations that reinforce the same legal restrictions and traced their apparent non-conformity to generally accepted international standards. In this connection, the most of the remarks are caused by legal norms restricting political rights and freedom of judges. In particular, political-legal restrictions include: 1) requirements for keeping the political neutrality; 2) restriction of the right to freedom of expression and association; 3) prohibition to perform actions that complicate the functioning of the court or undermine the authority of the judiciary.

Summarizing the article, it should be noted that to completely suspend judges from political life, as well as to prohibit them to have any political persuasion, be supporters of a party or its candidate is objectively impossible. Therefore, establishing requirements for the observance by judges of the political neutrality, the legislator, first of all, should strive to that their political preferences do not affect the independence, objectivity, and impartiality of the court.

SECTION 2
PRACTICE OF ADMINISTRATIVE COURTS OF UKRAINE

CURRENT ISSUES OF REFORMING AND INTRODUCTION OF A SIMPLIFIED SYSTEM OF ADMINISTRATIVE SERVICES IN UKRAINE

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The purpose of the article is a study of current issues on reforming and introduction of a simplified system of administrative services in Ukraine. It should be noted that in Ukraine there are formed sufficient legal mechanisms needed to implement effective administrative services. Organization and legal provision of quality administrative services are one of the strategic challenges on a way to improve public administration.

The Concept of the system of providing administrative services by executive authorities involves introducing the concept of public services, criteria for their definition and classification and specifies the concept of administrative services.

To improve the quality of providing administrative services in the Concept is deemed necessary: maximally decentralize their provision; provide competitive salaries in the administrative bodies, promote the development of employees motivation to achieve the end result, rather than a formal compliance with rules; develop standards of providing administrative services; establish modern forms of providing administrative services, which will allow to organize obtaining all or most common administrative services provided at a certain administrative and territorial level, in the same room; pay services directly in the place.

Also, it is useful to note that as a result of a long reforming the system of administrative services, in order to ensure full implementation of the Law of Ukraine "On Administrative Services", creating favourable conditions and approaching administrative services to the population, the following steps should be taken: Firstly, it is appropriate to adopt the Law of Ukraine "On the List of Administrative Services and Fee (Administration Fee) for their Provision" and the Administrative Procedural Code of Ukraine as it is set out in the Tax Code of Ukraine (taxes, fees, duties, other charges); secondly, the Cabinet of Ministers of Ukraine should approve the list of administrative services of the executive authorities provided through the centre of providing administrative services; consider the possibility of organization of providing the most essential social services to citizens in the established centres of providing administrative services.

BASIC PRINCIPLES OF ACTIVITY OF LAW ENFORCEMENT AUTHORITIES AS A PART OF PUBLIC ADMINISTRATION

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In terms of the development of Ukraine, integration into the European legal space is accompanied by reforming the legal system of Ukraine, efficiency of which depends on the consideration of fundamental legal values elaborated by the European community. Today the issue of effective crime prevention, protection of public order, protection of rights and freedoms of human and citizen are the most important issues of internal and foreign policy of all states without exception.

The Constitution of Ukraine underlines that the main objects that must be defended by the system of state authorities, is the person – his/her rights and freedoms; society – its material and spiritual values; state – its constitutional order, sovereignty, and territorial integrity. In fact, in Ukraine guaranteeing the supremacy of law is one of the problems that need to be urgently resolved.

In the article, the basic principles and standards that should determine the bases of establishment and activities of the law enforcement authorities of Ukraine as a part of the public administration are considered. Thus, these basic principles and standards are the rule of law; rule of justness; priority of rights and freedoms of man and citizen; equality; prohibition of abuse of power; justice; data protection and respect for privacy; compliance with the confidentiality of information when performing queries; transparency; openness to external review and transparency for inspections and supervision; availability of administrative bodies and administrative services, e-government and use of e-mail; efficiency and effectiveness; mutual responsibility of state and citizen.

SOME FEATURES OF ELECTORAL RIGHTS' PROTECTION IN A COURT

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The article considers problems of judicial protection of electoral rights. The author examines some aspects of procedural law and judicial practice in the consideration of electoral disputes in administrative proceedings and perspectives of legal regulation.

Given the systematic interpretation of the provisions of electoral laws of Ukraine, we offer a classification of subjects having the right to sue in electoral disputes concerning the parliamentary elections. In particular, the first category of persons who can sue in the election dispute concerning parliamentary elections, includes subjects of this election process; the second group of persons entitled to apply to the courts in the election dispute include persons who are granted with the right by relevant election laws; the third group of people who have the right to appeal the court in the election dispute are persons to whom this right by the Administrative Legal Procedure Code of Ukraine and the laws on elections is not provided, but not banned.

We believe that regardless of the election type the right to judicial protection must be unified and unlimited, including by timing of examination by courts of electoral cases. Given the characteristics and nature of electoral disputes, it is necessary to provide the Higher Administrative Court of Ukraine with the authority to conduct a legislative revision of decisions of district and appellate administrative courts in disputes concerning the establishment of election results. Thus for the effective regulation of electoral legal relationships, a legislator is obliged not only to expand the ways to restore the violated rights of subjects of election processes but also to provide real enforcement of judgments in electoral cases.

The foregoing demonstrates the need for a single and uniform application of electoral legislation by jurisdictional bodies, which consider election disputes arising from the principle of equality of all before the law and the court.

SECTION 3
PRACTICE OF ECONOMIC COURTS OF UKRAINE

EXTRAJUDICIAL DISPUTE RESOLUTION AS THE MOST IMPORTANT STAGE IN THE ECONOMIC PROCEDURAL LAW

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The article is dedicated to the defining the mechanism of regulating commercial disputes in the pre-trial order for quickly deciding legal disputes between entities.

A justified, efficient, impartial and accessible court is one of the highest values of civil society. However, the relevance of research of pre-trial regulation of economic disputes determines the practice of economic process based on the rule of law. Therefore, improving the economic procedural legislation, introduction of responsibility for failure to adhere to procedures of the prejudicial settlement of disputable legal relations is an important and necessary factor in the economic process.

Solving the existing problems in this area should contribute to the promotion of procedure of pre-trial dispute resolution and the implementation of organizational and technical measures for the possibility of obtaining a prejudicial act: court approval or decision, which immediately establishes facts that took place at the occurrence of certain legal relationships during the pre-trial regulation.

Thus, analyzing the material given in the article, it can be concluded that the recognition by the courts of the prejudicial stage of economic disputes' regulation not contradicts the current legislation and in no way violates the rights of economic entities. Therefore the practice of extrajudicial resolution of the dispute by lodging a claim and its real consideration should be developed and used. It is necessary to provide a clear procedure for pre-trial resolving of economic disputes at the conclusion of commercial contracts and to provide responsibility for violation of the contract at this point. This will facilitate a rapid resolution of a concrete dispute, reducing the workload of courts with such disputes that can be resolved without going to court, saving time and raising the role of the legal service in general.

PROBLEMS AND DIRECTIONS OF IMPROVEMENT OF ECONOMIC PROCEDURAL LEGISLATION IN TERMS OF JUDICIAL REFORM

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The main goal of reforms in Ukraine towards integration of our country into the European economic and legal space is to restore public confidence in the justice, to bring national legislation in line with the European standards, and therefore there is a need for further scientific and theoretical justification of problems and prospects of reforming and improvement of the economic process.

The Working Group on procedural law reform, which was established by the Council on Judicial Reform under the President of Ukraine, has developed and taken as a basis the Draft of the Economic Procedural Code of Ukraine in the new edition, which offers a number of significant innovations.

Project developers should assess the possible risks and take into account warnings and offers of scholars and practicing lawyers in further work on the project, to complete and improve the rules that cause the most remarks, eliminating disputes and envisaging appropriate protective mechanisms to prevent cases of abuse of procedural rights by the parties.

In addition, according to the results of the study, it can be concluded that despite the numerous remarks to the project and its reasonable criticism, its development and further implementation taking into account features of economic activity is a step towards the integration of Ukraine into the European legal system, improving the efficiency of economic justice and its optimization.

SECTION 4
COURT PRACTICE IN CIVIL CASES PROCEEDING

CAUSE AND PROCEDURE FOR THE JUDICIAL PROTECTION OF PERSONS WHO HAVE NOT PARTICIPATED IN A CIVIL CASE

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The article is devoted to defining the grounds and order of judicial protection of the rights of persons not participated in the civil case. Analysis of current legislation allows determining that the procedural protection means of rights and interests of persons, who did not participate in the case, are different depending on the availability of possible violations of law at the time of applying to the court. Persons who did not participate in the case, whose rights and legitimate interests are violated by decision, are characterized by the fact that they were being not involved by the court in the process, accordingly, did not participate in it as persons participating in the case; approved by the court decision violates their rights and legitimate interests; nature and extent of violations of the rights and legitimate interests of these persons is irrelevant. Persons not participated in the case, the issue about the rights and obligations of which is resolved in the decision, are characterized by the fact that they also not participated in the court process; court decision can violate or not violate their rights and legitimate interests; court directly adopted a decision on their rights or obligations. In any case, these provisions stipulate that in the operative part of court decision the issue about the rights of these persons should be set directly. It should be emphasized that for the purpose of fair court proceedings it is important not to restrict the right to appeal to court only to such persons as significantly limited rights to judicial protection of those persons, which rights and interests were actually affected by accepted decision, but not legally defined in the court decision.

Effectiveness of protection of the rights of persons not involved in the case requires the order development as a separate procedural institution or relevant changes of existing methods of judicial protection of the rights and interests of the investigated categories, more detailed study of mechanisms to protect the rights of persons not involved in the case, which is enshrined in the civil procedural legislation of Ukraine and the foreign procedural legislation.

PUBLICITY AS AN ELEMENT OF THE MAIN TASK OF CIVIL PROCEEDINGS

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The article investigates the basic problem of civil proceedings in terms of provision of basic international standards of justice – a public proceeding by a court.

A lot of studies are devoted to the problem of determining the goals and objectives of civil proceedings; this problem was investigated by such scientists as H.O. Zhylin, K.V. Husarov, S.L. Dehtiarov, O.S. Zakharova, I.O. Izarova, S.O. Koroyied, M.Y. Shtefan, S.Y. Fursya, V.V. Yarkov and other.

In our view, the openness of case consideration and its decision is decisive and crucial for ensuring justice and therefore is an integral part of the main task of civil proceedings, characteristic of the court and stakeholders' activities concerning review and solution of a case. This feature describes exactly judicial activity on solving civil disputes, its external manifestations, which are also embodied in the principles of civil procedure, along with the timeliness and impartiality.

Therefore, the main task of civil justice should be recognized as justified, equitable, timely and open consideration and resolution of civil cases in order to protect the violated, unrecognized or disputed rights, freedoms and interests of individuals, the rights and interests of legal entities, and the interests of the state.

Thus, we consider as necessary to amend Art. 1 of the Civil Procedural Code of Ukraine and put it as follows: "The tasks of civil justice system is justified, impartial and timely consideration and resolution of civil cases in order to protect the violated, unrecognized or disputed rights, freedoms and interests of individuals, the rights, and interests of legal entities, state interests."

SECTION 5
INVESTIGATIVE PRACTICE

FORENSIC CHARACTERIZATION OF CRIMES AGAINST THE ENVIRONMENT: THE ESSENCE AND PRACTICAL VALUE

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The article analyzes the scientific approaches to defining the essence of forensic characteristics of crimes against the environment. Attention is paid to the need to allocate such scientific concepts as "criminological characteristics of a certain type of criminal offence" or "criminological characteristics of crime groups". The problem of the formation of criminological characteristics as a system of generalized data on the typical signs of criminal offences based on relationships between elements is considered. It emphasizes the practical importance of forensic characteristics in the organization of investigation of crimes against the environment and the construction of methodological recommendations for pre-trial investigation of this group of criminal offences.

In modern forensic science, such topic as the nature and significance of forensic characteristics is very popular and widely studied. To the scientific use the term "criminological characteristics of crimes" was introduced in the late 1960s. However, during the analysis of scientific studies on forensic characterization of crimes, it appears that there are contradictions in determining the criminological characteristics, in approaches to its essence, structure (composition of elements), the methodology of development and opportunities for practical use. We consider that the cause of these contradictions in these matters are different views on forensic characterization of crimes, which can be regarded as a description of characteristic features of a particular crime, as a part of a methodology (e.g., methods of investigating crimes against the environment), as a name of forensic doctrine (separate forensic theory).

So, speaking of forensic characterization of crimes it is necessary to clearly distinguish between theoretical concept as the basis for the formation of special methods of crime investigation and work (applied) investigation tool as a system of collected data on forensic-significant features of a certain type (group) of crimes that an investigator should use under the criminal proceedings.

Criminalistic characteristic of certain type or group of crimes, including crimes against the environment, should remain as a part of a separate methodology. It is a system of data on the typical characteristics of a relevant plurality of crimes that aims to promote the successful solution of tasks of pre-trial investigation of certain categories of crimes.

INVESTIGATIVE EXPERIMENT: USE OF SPECIAL KNOWLEDGE AND CONDITIONS OF THEIR NORMATIVE APPLICATION

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On the basis of analysis of the Criminal Procedural Code of Ukraine and the literature studied the concept of "specialized knowledge", "specialist" and "investigative experiment", their essence; analyzed views of scientists on the specialized knowledge and ability to use them in the conduct of investigative experiments; highlighted procedural status, role of a specialist and reasons of the mandatory use of specialized knowledge in conducting investigative experiment.

Generally, the investigative experiment is the most labour intensive and difficult investigative action. Results of the rightly conducted action play an important role in proving the guilt of persons suspected of having committed a crime. Thus, the involvement of specialist, high-quality and efficient use of specialized knowledge in conducting investigative experiment require careful preparation, clear organization of tactical methods and combinations that will allow receiving truthful testimonies and proving the involvement of certain individuals in the crime. Investigation of the problem of the use of specialized knowledge in conducting investigative experiment despite a number of scientific papers on this issue is now urgent. It can be concluded that the lack in the legislation in Ukraine of tool to attract specialists to conduct certain investigative actions, unclear interpretation of the norms of criminal procedural law are problematic issues. These circumstances necessitate research of procedural, theoretical and practical aspects of the use of specialized knowledge, particularly during the investigative experiment. It should be noted that a legislator should conduct investigative experiment necessarily involving specialists and using complex scientific-developed and forensic methods and tools taking into account specific circumstances.

TYPICAL INVESTIGATIVE SITUATIONS OF THE INITIAL STAGE OF INVESTIGATIONS OF UNAUTHORIZED OCCUPATION OF LAND PLOTS AND UNAUTHORIZED CONSTRUCTION

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Any activity occurs under certain circumstances and is under the influence of various factors. One of these factors in the investigation of an unauthorized occupation of land plot and unauthorized construction is an investigative situation. There are many definitions of "investigative situation", but despite this, an analysis of the relevant scientific statements leads to the conclusion that the forensic doctrine of the investigative situation is one of the most deeply studied both on the theoretical and practical sides.

On the investigative situation depends the conducting of investigative (search) and covert investigative (search) actions and features of their tactics, as well as the investigation as a whole. Analysis of investigative situation prevailing at a particular investigation allows setting out investigative leads, gradually identifying specific task of investigation and algorithm of investigative actions aimed at their solution.

The aim of the article is to determine, based on the analysis of the materials investigative and court practice, typical investigative situations arising in the investigation of the unauthorized occupation of a land plot and unauthorized construction as well as development of a complex of organizational and tactical measures aimed at solving tasks in terms of these investigative situations.

In the investigation of the unauthorized occupation of a land plot and unauthorized construction on its initial stage, there arises a circle of the most typical investigative situations, the content of which is largely determined by the source, type and amount of information contained in the original material about a crime. These situations cause specific tasks for an investigator and make a complex of forensic recommendations to address them.

SECTION 6
COURT PRACTICE IN CRIMINAL PROCEEDING

HISTORICAL BACKGROUNDS FOR THE INVESTIGATIVE JUDGE INSTITUTE ESTABLISHMENT: DEVELOPMENT OF JUDICIAL CONTROL AND PROSECUTOR'S SUPERVISION

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The article is devoted to the historical and legal review of backgrounds for investigative judge institute establishment in light of the development of judicial control and prosecutor's supervision. Besides, the main approaches to legal regulation of judicial control and prosecutor's supervision on pre-trial investigating bodies' activity are analyzed, and also an impact of a change in control bodies on the efficiency of pre-trial investigation is demonstrated.

Historical background – is the best way to understand how the legal relationship evolved over time, how the criminal procedural law institutions built, how criminal proceedings reformed.

Judicial control over the actions of preliminary investigation bodies in criminal proceedings has come to a long and difficult path of transformations, during which it was abolished, and again renewed for approval in the future at the legislative level with the adoption of the new Criminal Procedure Code of Ukraine in 2012. Analysis of an era has given us a possibility to conclude that the prosecutor's supervision, no matter how hard one tried to leave it at the heart of monitoring the pre-trial investigation, is not a separate area and its organs cannot be impartial over their characteristic prosecutorial bias. Therefore, the absolute necessity to return to the court control functions and deliver them into the hands of the judiciary got its expression in the new legislation.

Establishment of an investigative judge institute by the best way illustrates to us variable directionality in time since having already the experience of consolidation by judicial authorities of powers to control the bodies of pre-trial investigation, a national lawmaker returns to such a practice through the decades, thereby recognizing its efficiency and reliability.

RIGHT TO APPEAL AGAINST DECISIONS, ACTIONS OR INACTIVITY OF PRE-TRIAL INVESTIGATION BODIES AND PROSECUTOR IN INDEPENDENT UKRAINE

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The article analyzes trends and stages of development of the legislation concerning appeals against decisions, actions or inactivity of bodies of pre-trial investigation and prosecutor in the independent Ukraine.

Thus, since the independence of Ukraine the legislation gradually changed in the direction of expanding the scope of appeal in a judicial proceeding against the decisions, actions, and omissions of the preliminary investigation bodies and the prosecutor. Initially, these changes have established the possibility of a judicial appeal of certain decisions of the preliminary investigation bodies and the prosecutor, and then gradually expanded the scope and subject of the judicial appeal. The following development stages of the legislation on the right to appeal against decisions, actions or omissions of the preliminary investigation bodies and the prosecutor at the time of independence of Ukraine can be distinguished:

1) 1992–1996 – introduction of elements of the judicial procedure of appeal: a) gradual appeal against decisions initially to the prosecutor (higher prosecutor), and then appeal of some decisions to the court; b) alternative appeal of some solutions to prosecutor or court;

2) 1996–2012 – envisaged unconditional alternative appeal of decisions and actions to the agency of inquiry and investigative prosecutor or to the court, and decisions and actions of the prosecutor – to a higher prosecutor or the court;

3) from 2012 – expanded the subject of judicial appeal: provided appeal not only of decisions and actions but also omissions of investigator and prosecutor (with some exceptions).

In the dynamics of changes in legislation certain trends can be traced. According to the subject of the appeal to the court, legislation envisaged appeal firstly of decisions of the pre-trial investigation bodies and the prosecutor, then – their actions and finally – their inaction. By the appeal procedure, the legislation changed in different directions and initially involved a phased appeal to the prosecutor and the court, and later – an alternative appeal to the prosecutor or the court. By volume of appeal there was originally supposed the appeal of certain decisions and actions, then the volume of appeal gradually extended to the appeal of any decisions, actions, and omissions of the preliminary investigation bodies and the prosecutor.

LEGAL BASIS OF MAINTAINING OF OFFICIAL PROSECUTION BY PROSECUTOR

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The paper investigates the system of legal acts constituting a legal basis for maintenance of official prosecution by a prosecutor. The aim of the article is to define the system of regulations that constitute the legal basis for maintaining the official prosecution by the prosecutor.

The prosecutor, exercising supervision over the observance of laws during the pre-trial investigation in the form of procedural management of pre-trial investigation is authorized to support public prosecution in court, refuse to support official prosecution, modify or impose additional accusation in the manner prescribed by the Criminal Procedure Code of Ukraine.

It is important to note that without a clear understanding of the system of the legal basis of any activity it is impossible to perform effectively the functions assigned to one or another state body. So, determining the legal basis of performing by prosecution authorities one of the basic functions – maintenance of public prosecution – is of key importance.

Therefore, the legal basis for the performance by the prosecutor of functions of public prosecution is as follows: the Constitution of Ukraine, international legal acts, the Criminal Procedural Code of Ukraine, the Law of Ukraine “On the Prosecutor's Office”, departmental acts of the General Prosecutor's Office.

Prosecutors should pay attention to the study of the practice of the European Court of Human Rights, as well as domestic and foreign jurisprudence.

FEATURES OF USING MEASURES OF CRIMINAL PROCEEDINGS BY INTERNATIONAL CRIMINAL COURT

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The author analyzes the basic principles of measures to ensure the criminal proceedings based on the practices of the International Criminal Court. Particular attention is paid to the issue of a warrant of arrest of a person and to the issue a summons for the person to appear. Also, the author underlines defects of arrest procedures prescribed by the Rome Statute of International Criminal Court.

So, summing up, it should be noted the following:

1. The most frequently used means of ensuring criminal proceedings under the Rome Statute of the International Criminal Court can be called the arrest of a person. The alternative is the issuance of summons, which is used in the case if the Court has reasonable grounds to believe that the person against whom issued such an order will not hide from the Prosecutor and the Court and on his own will appear on call to the venue of venue of proceedings.

2. The procedure of arrest (detention) of a person usually involves the following main stages:

a) Prosecutor statement about the need for detention;

b) consideration of the application by the House of the previous proceedings and the decision about accepting or rejecting;

c) transmission of the application to the receiving state or the potential staying of a person against whom the proceedings is conducted;

d) detention of a person by the receiving state in compliance with the regulations and procedures of the national legislation;

e) verification of the legality of the detention of a person by national competent authority;

f) Message of the International Criminal Court by the receiving state about the detention of a person, introducing a person with a warrant for the arrest and explaining its rights,

and optional phases: the individual appeal of the decision on arrest and making a decision on unconditional temporary release of the person or provisional release of the person with the condition.

3. Results of the analysis of practice of the International Criminal Court indicate a number of shortcomings of the current procedure of application of the criminal proceedings measures, which primarily related to the conflict of the national legislation of many member states of the Charter and the Rome Statute and the lack of real means of coercion or sanctions for states that ignore the requirements of the International Criminal Court. The presence of these shortcomings and the need to address them opens prospects for further research in this area.

ON THE ISSUE OF THE SYSTEM OF CRIMINAL LAW MEANS THAT APPLY TO LEGAL ENTITIES

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The article studies some criminal law means that apply to legal entities. This includes measures and legal constraints and prospective criminal liability of legal persons, which has a subsidiary character on a retrospective responsibility of individuals, officials who have committed a crime, using legal status in a legal entity, which is confirmed by a court sentence. Theoretical structuring of such instruments is a modern innovation of Ukrainian legislation for the implementation of European standards.

During the theoretical justification of criminal means, applicable to entities, their structure is found, which consists of the activities, certain techniques, tools, peculiar to the general and special parts of the Criminal Code applicable to legal persons. Inter-branch tools combine the use of criminal law and criminal procedural measures applicable to legal persons. The famous is the right-restrictive mean of criminal liability of legal persons that can absorb up to legal regulation prohibitive, punitive, right-incentive measures and preventive and stimulating measures for the lawful conduct of both physical and legal entities.

Thus, the right restriction as a means of criminal liability of legal persons is the unity and coherence of measures of legal influence that form criminal legal regime of applying to legal entities a vicarious liability for committing an official crime in the legal framework of its authorized operation in order to prevent and expose official crimes in the process of organization and implementation of business management.

UNDERSTANDING OF THE INTERNAL SECURITY OF UKRAINE FROM ILLEGAL ENCROACHMENTS' CONCEPT IN MODERN SCIENCE

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In the article, the modern scientific trends for defining the internal security of the state are analyzed. Problematic aspects of correlation between the concepts of "national security" and "internal security" are highlighted.

Creation of an effective system of internal security of Ukraine, modernization of its military policy in accordance with the requirements of time is a part of the state processes in Ukraine. The existence of Ukraine as a sovereign and stable state, its progressive development, survival, and security are impossible without the development and implementation of a targeted system of the policy of national interests' protection against external and internal threats. All this causes a relevance of the issue of Ukraine's internal security.

The purpose of this article is to highlight the problem of understanding of the concept of internal security of Ukraine against illegal encroachments in modern science.

Conducted analysis of the works of local and foreign scientists and relevant legislation leads to the conclusion that the understandings of terms "security", "state security", "national security", "public security" include the concept of "internal security" as an integral part of their content.

Summing up the understanding of the concept of internal security of Ukraine against illegal encroachments in modern science, we can note that the legislation does not give a definition to the internal security. Instead, the Law of Ukraine "On National Security of Ukraine" on 19 June 2003 contains a definition of "national security", which is the basis for the internal security definition. Such views in academic circles both in Ukraine and abroad are shared by a significant number of scientists. Summarizing these trends, it can be determined that internal security – is a security of vital interests of human and citizen, society and state, which provides the sustainable development of society, early detection, prevention and neutralization of real and potential threats within the country in all state important areas.

HISTORY OF RESTRAINT MEASURES' FORMATION FROM 1917 IN UKRAINE

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In the article, the legal characteristic of measures of restraint in a criminal trial of Ukraine from 1917 is considered. Types of measures of restraint, ways of their use to participants of criminal proceedings are analyzed.

Summing up the stated in the article, it can be concluded that today in the Criminal Procedure Code of Ukraine concerning measures of providing criminal proceedings and measures of restraint there is a number of the theoretical questions and practical problems concerning as definitions of concepts, classifications, features of these actions, and especially practical questions of application of norms of a criminal procedural law according to the fundamental principles of the right, observance of the rights and freedoms of citizens, observance of the international standards and rules of rather above-mentioned questions. The general rules of application of measures have to be based on provisions of the Constitution of Ukraine and the international legal acts ratified by Ukraine. At application of measures the rights not only suspected or accused, but also the rights and freedoms of other persons, in particular members of families of the suspect (accused) should not be violated. Novelty and absence of sufficient legal base and practice of application of some measures of providing criminal proceedings in the theory of criminal trial considering, this question demands completion. Problems of application of measures of restraint are topical issues of a criminal procedural law therefore were, is and will be a subject of scientific research.

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