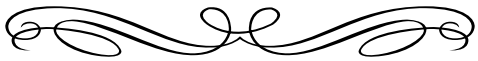
MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE
KHERSON STATE UNIVERSITY
FACULTY OF LAW

JUDICIAL AND INVESTIGATIVE PRACTICE IN UKRAINE



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Yeshchuk O.M., Candidate of Juridical Sciences,
Senior Lecturer at Department of Administrative and Economic Law,
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Marchenkova S.O., Candidate of Juridical Sciences,
Pro secutor,
Kherson local prosecutor's office

The article based on analysis of the views of scientists in the field of administrative law and the current legal framework studies certain aspects of the prosecution authorities' reform.

As any reform, reform of the prosecutor's authorities is not an exception and has its positive and negative aspects. The positive include:

1) renewal of prosecution staff, increasing requirements for candidates for the positions;

2) ensuring the functioning of such prosecutorial authorities, as the All-Ukrainian Conference of Employees of the Procuracy and the Council of Prosecutors of Ukraine, which allows reducing the powers of heads of prosecutor offices in personnel policy, and thus reducing the possibility of getting undue advantage by abusing official position;

3) fixation at the legislative level of regulations that prosecutors are subordinated to their superiors, only in fulfillment of a written order of an administrative nature related to the organizational issues concerning activities of prosecutors and prosecution authorities.

As for the negative features of prosecution reform, they, in our view, include:

1) over the decrease in the number of prosecutors the quality of procedural guidance of investigating crimes, maintaining public prosecution in the courts because of the increased burden on prosecutors can deteriorate;

2) due to the fact that the prosecution reform is in the existence of the old administrative-territorial structure there can be a problem of its functioning quality;

3) neither the legislation nor the Constitution has no restrictions for the President on the person he proposes to approve as the Prosecutor General.

How effective the current reform of prosecution authorities is – time will tell, and yet the first steps in this direction have already been made.

IMPORTANCE OF CIVIL SOCIETY AND DEMOCRACY IN THE FORMATION OF INTERACTION BETWEEN JUDICIARY AND PUBLIC

Kablak P.I., Chief Judge,
Court of Appeal of Lviv region

Kravchuk V.M., Candidate of Juridical Sciences,
Senior Lecturer at Department of Regulation of Economic and Legal Sciences,
Ternopil National Economic University

The article analyzes the importance of civil society for the development of interaction between the judiciary and the public. In particular, the question of correlation of civil society and democracy, the rule of law, as well as their role in creating an effective system of interaction between the judiciary and the public are considered.

An essential basis for developing effective forms and methods of interaction between the judiciary and the public is a developed civil society, which provides:

1) ability of people to solidarity, to integrate into the community, their “maturity” and initiative;

2) availability of sufficient network of associations, through which personal initiatives are implemented and which act as intermediaries in the relations of the state, including judiciary and civil society;

3) presence of independent and politically unbiased media;

4) opportunity to participate in improving the functioning of the judiciary, especially by means of public control.

Obviously, when in Ukraine the judiciary activities is of considerable interest, the society wants to be informed of proceedings in the trial of a question of the case, and therefore today there is very necessary to establish a permanent dialogue – communication that would help to solve management tasks of courts and closer Ukrainian justice to European standards. Creating an effective system of cooperation between the judiciary and the public is only possible in the case of simultaneous development of civil society and it is one of the democratization priorities in modern Ukraine.

FORMATION OF THE JUDICIARY IN UKRAINE: INNOVATION AND FURTHER IMPROVEMENT

Slobodianyk N.S., Postgraduate Student
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National University "Odessa Law Academy"

In the article, the actual problems of formation of the judiciary in Ukraine are considered. Legislative consolidation and the practical implementation of the order empowerment of judges in accordance with the law are analyzed. On this basis, outlined the main directions of new initiatives in reforming the judiciary.

At the present stage of state building in terms of the fundamental reforms' implementation in different spheres of society one of the vectors of the state's activity is aimed at a fundamental renewal and reform of the judiciary.

In order to achieve aspirations to make the judiciary transparent, democratic and optimally functional, judges should be elected by the local population. The first deliberate step towards the realization of this idea must be a volitional decision of people's deputies on the constitution of the right of people's direct participation of the people in shaping the judiciary. Proposals for fixing the provision on elective judiciary should be expressed as a particular vision of the model of an elective judiciary, order the election of judges of such courts. Also in the case of formation of the judicial corps directly by the people, the amendments should be made to the Law of Ukraine "On the Judicial System and Status of Judges". The constitutional provision on the procedure of electing judges by people will rather have a blanket nature. Details of the procedure for the election of judges and forms of election implementation should be regulated by the special law. Thus, the most appropriate would be the election of judges at the local level that could be withdrawn on the grounds provided solely by the law, by the preliminary audit findings and authorized body conclusions. Given the fact that in recent years much attention is paid to the decentralization of government and the increasing role of local governments, an important role in the organization of the judges' election can be played just by local governments.

SECTION 2
PRACTICE OF ADMINISTRATIVE COURTS OF UKRAINE

SPECIFICITY OF PROOF IN THE COURSE OF JUDICIAL CONSIDERATION OF LAND DISPUTES

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The article studies the specific features of a circumstance in proof during the judicial consideration of land disputes, identity and admissibility of evidence, distribution of the burden of proof, regulation of presumption and preclusion on land disputes. Substantiated the view that the lack of special rules regulating features of proof on land disputes in the land legislation of Ukraine should be recognized as a gap in the land and procedural law, which can be overcome by amending the relevant laws and regulations, as well as through common law.

Given the special importance and complexity of land disputes, it is appropriate to fix in procedural laws rules of authenticity of the evidence on this category of cases with direct restriction of possible use of evidence in establishing for example facts of land plots belonging to one or the other person, in resolving disputes about the boundaries of land plots etc.

Depth study of practice and deciding land disputes, development of scientific advice on issues of evidence in deciding land disputes (including making appropriate changes and amendments to the land law) is a priority task not only for the Supreme Court of Ukraine and higher specialized courts of Ukraine, but also for the science of land law.

WAYS OF DEVELOPMENT OF DOMESTIC LEGISLATION IN RELATION TO TRANSPARENCY OF REALIZATION OF JUDICIAL ACTIONS IN ADMINISTRATIVE LEGAL PROCEEDING

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Senior Lecturer at Department of Constitutional, Administrative and Economic Law,
Kirovohrad Institute of State and Municipal Administration,
Classic Private University

The article is devoted to the defining effective ways of improving current regulatory acts in the field of ensuring transparency in the implementation of procedural actions during the consideration and decision-making in administrative cases.

The purpose of the article is to identify effective ways of national legislation development concerning the transparency of implementation of procedural actions in the administrative proceedings.

Therefore, urgent is the question about the further development of the civil and information society that will have access to the full array of clearly defined, logically coherent, socially important forensic information. Also, a focus is made on the fact that, in our opinion, fixing the procedures of implementation of transparency and openness in the administrative proceedings in a number of legal acts of different legal force leads to difficulties in the perception of the essence of these principles to ordinary citizens.

Based on the aforementioned in the article it can be concluded that the adoption of the Law of Ukraine “On Ensuring Transparency in the Judiciary of Ukraine” and the introduction of proposed changes and amendments to the current legislation will not only ensure transparency in the implementation of procedural actions in administrative proceedings but also in overall effective judicial protection of rights, freedoms and legitimate interests of human and citizen in public legal relations.

SECTION 3
PRACTICE OF ECONOMIC COURTS OF UKRAINE

CHARACTERISTICS OF ECONOMIC LEGAL PROCEEDINGS REGARDING THE ISSUANCE OF EXECUTIVE DOCUMENTS ON THE COMPULSORY EXECUTION OF ARBITRAL DECISIONS

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The article is devoted to the analyzing and outlining the main characteristics of economic procedural relations regarding the issuance of enforcement documents for the compulsory execution of decisions of arbitration courts taking into consideration international standards of the development of alternative forms of dispute decision.

On the basis of specified in the article, it is possible to determine that the economic procedure relations regarding the issuance of enforcement documents for the compulsory execution of decisions of arbitration courts have their own unique characteristics, causing a controversy in law-making and law enforcement fields.

Content analysis of studied legal relationships reveals the objective necessity of forming a modern approach on the background of established traditions of development and existence of alternative forms of conflict decision. The first step to facilitate strengthening the authority of arbitration is a clear application of existing regulations, including about the issuance of enforcement documents for the compulsory execution of decisions of arbitration courts, excluding attempts of a formal approach to this institution. Then it is necessary carefully to implement ideas of ensuring full independence of arbitration, including in the implementation of their decisions, the gradual liberation of state courts from non-core operations in order to concentrate on making quality justice.

PECULIARITIES OF ARBITRATION PROCEEDINGS DEVELOPMENT IN THE UKRAINIAN LANDS IN XVII–XIX CENTURIES

Kotviakovskyi Y.O., Senior Instructor at Department of Justice,
Sumy National Agrarian University

The article is devoted to the problems of formation of arbitration as an alternative method of resolving property disputes in the Ukrainian lands in the XVII-XIX centuries. The norms of current legislation of the specified period and the features of case considerations by the arbitration courts are analyzed.

The purpose of the article is to research development of arbitration institute as an alternative mechanism for the consideration of property disputes in Ukraine during the XVII-XIX centuries.

Traditions of arbitration of property disputes, originating from the Kievan Rus, are continued during the XVII-XIX centuries in Ukrainian lands. During this period, the search for the most suitable forms of arbitration, which is based on the free consent of the parties on the election of arbitrators and the arbitration formation on this basis, is continued. During this period a range of private legal disputes that could be considered by arbitration courts is legislatively crystallized. Important for the further development of arbitration justice was recognition of arbitration decisions as a final and setting a possibility of its abolition by the state court for a limited number of grounds, as well as enforcement of arbitral decision with the help of the coercive power of the state.

The study of the formation and development of arbitration in the territory of Ukraine gives an opportunity to understand more deeply its nature and principles, uncover opportunities and features of the mechanism of arbitration in civil cases.

SECTION 4
COURT PRACTICE IN CIVIL CASES PROCEEDING

LEGAL REGULATION OF EMPLOYMENT CONTRACTS: CURRENT ISSUES OF JUDICIAL PRACTICE

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Sumy State University

The article deals with the current issues of judicial practice of regulation of employment contracts in Ukraine. The author studies some problems of discrimination against employees.

The constitutional rights of workers shall be guaranteed by the state. Ukraine as a democratic state creates terms for realization by the citizens of the constitutional right to work. With the purpose of providing realization of this right Ukraine adopted a number of normatively-legal acts. The Labour Code of Ukraine, adopted in 1971, is the primary source of law governing employment relationships in the Ukraine. The other sources of labour and employment law in Ukraine are: the Constitution of Ukraine and the labour regulations issued by the Cabinet of Ministers of Ukraine, the Ministry of Social Policy, and local state administrations. The Code regulates all kinds of labour relations, such as conclusion and termination of labour contracts, rights and responsibilities of employees and employers, labour safety rules, invalidity of employment and collective agreements, etc. Article 43 of Ukrainian Constitution guarantees to each citizen of working age the right to labour (work), including the possibility to earn one's living by labour that he or she freely chooses or to which he or she freely agrees. The State creates conditions for citizens to fully realize their right to labour, guarantees equal opportunities in the choice of profession and of types of labour activity, implements programs of vocational education, training and retraining of personnel according to the needs of society. Under the current Labour Law, employees are protected from illegal termination of labour relationship.

In order to avoid conflicts while entering into labour contracts it is better to include in the provisions of the contract reasonably phrased clauses regulating the employee`s conduct and the conditions of work during employment. As a closing remark, it is pertinent to mention that Ukrainian labour legislation is not perfect and needs reforming to not only reflect but give corrective treatment where necessary to the current realities and vagaries of the Ukrainian labour market.

JUDGMENT AND CONTENTS OF APPLYING JUDICIAL PRECEDENT

Maslov V.V., Degree Seeking Applicant,
Legislation Institute of the Verkhovna Rada of Ukraine,
Judge,
Trostyanetsky District Court of Sumy region

The article is devoted to the characterization of the judgment content in the application of the decision of judicial precedents, and the disclosure of defining features of such decisions, which are found in jurisprudence.

The purpose of the article is to study the judicial practice of national courts and its analysis in terms of the use of judicial precedent for further disclosure of the defining features of such decisions and to determine the trends of the judicial practice development in this area.

Thus, before the application of legal precedents when making judgments, judges should be familiar with its essence in order to properly substantiate its position on those legal relationships that are investigated by the court. Such an approach to the adoption of judicial decisions makes an effect of impartiality of the judiciary in applying the legal precedent and the finality of the judgment that allows the avoidance of doubt in the impartiality of the court, because the uniformity of application of a rule of law and judicial precedents as well reduces the bias of the court regarding its departure from the jurisprudence and interpretation of certain concepts or provisions. Uniformity of application of judicial precedents, the Convention on Human Rights and Fundamental Freedoms in judicial decisions regarding certain legal relationships, of course, should be based on the unity of jurisprudence.

The use of judicial precedent in court decisions that are adopted by the courts of Ukraine needs not only a meaningful approach to such a precedent as a source of law but its existing relationship with morality as one of the oldest traditions on which the case law is based.

MODELS OF MEDIATION: COMPARATIVE LEGAL ANALYSIS OF FOREIGN PRACTICE

Polishchuk M.Y., Postgraduate Student
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On the basis of comparative legal analysis of the practice of mediation in different countries, the model of this procedure is considered in the article. In addition, the peculiarities of disputes decision with the help of mediation within different models are defined, and the characteristics of each model of mediation in terms of the possible advantages and disadvantages of its use are given.

Many works of local scientists are dedicated to the research of various aspects of mediation: Y.V. Baulina, V.S. Hopanchuk, I.A. Voitiuk, V.V. Zemlianska, V.T. Maliarenko, N.V. Nestor, Y.D. Prytyk, M.I. Khavroniuk. The issue of mediation is also studied by many foreign scientists, including N. Alexander, K. Moore, S. Peppit, J. Folberg and others. However, the study of the practice of mediation and efficiency of specific models of this procedure is still important over the lack of Ukraine's comprehensive studies on this problem.

The purpose of the article is to clarify the general criteria for division of mediation into different models and to identify features of the procedures within each model.

The experience of foreign countries shows that the best option for the successful introduction and use of mediation as a method of deciding disputes of different categories is the support not only judicial but also private mediation development. Given the fact that in Ukraine mediation is a relatively new and uncommon institution, thus both private and judicial mediation models are quite promising. Features of the application of appropriate models of mediation in foreign countries should be taken into account when working on the national legal regulations of mediation procedure and during the development of the concept of development and dissemination of this method of dispute decision in Ukraine.

SECTION 5
INVESTIGATIVE PRACTICE

DEVELOPMENT OF LEGISLATION AND THEORETICAL VIEWS ON INVESTIGATORS' INTERACTION WITH CRIMINAL INVESTIGATION UNITS AT THE PRE-TRIAL PROCEEDINGS

Boiko O.P., Lecturer at Department of Criminal Process,
Dnipropetrovsk State University of Internal Affairs

The article considers some aspects of the development of legislation and theoretical views on the cooperation of investigators with the criminal investigation units at the pre-trial proceedings and marks periods of their historical development.

The purpose of the article is new scientific results obtained in the course of historical and legal analysis and studying periods of implementation and development of legislation and theoretical views on the cooperation of investigators and the criminal investigation units at the pre-trial proceedings.

The carried out research on some aspects of the development of legislation and theoretical views on cooperation of investigators and the criminal investigation units at the pre-trial proceedings in a historical retrospective enabled us:

– to identify, according to the adoption of criminal procedural laws, which substantially changed the powers of investigators with the criminal investigation units and accordingly varied forms of cooperation between them, the five major historical periods of the genesis: 1) from 1864 to 1922; 2) from 1922 to 1927; 3) from 1927 to 1960; 4) from 1960 to 2012; 5) from 2012 up to this day;

– to identify the main proceedings forms of investigators` interaction with criminal investigation units inherent in each of the five periods and to demonstrate their difference from procedural forms of interaction of the prior periods.

The prospect for further research is to study the problems of interaction between investigators and criminal investigation units at the pre-trial proceedings.

HISTORICAL ASPECTS OF FORMATION OF THE OPERATIVE AND INVESTIGATIVE ACTIVITIES

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Rodik L.M., Senior Instructor
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The article investigates the historical background of operational and investigative activities, analyzes the stages of their formation.

Analysis of legal regulation of operational and investigative activities allows detecting changes in its character over time. On the early stages of state supreme power only makes the task of tracing to trusted individuals, giving them the necessary powers, including backdating sometimes. Then legislative acts more detail regulate ways of obtaining and transferring data, assuming the character of tutorials that distributed the experience of best investigators and secret service men. Finally, in these acts appear regulations that set limits on the authority of investigation executives and their staff.

The level of regulation of operational and investigative activities directly related to its effectiveness. Lack of regulation opens space for a subjective factor's influence, and this effect is both positive and negative. For unambiguous interpretation and effectiveness of operational and investigative activities, an adoption of a new regulation is appropriate and necessary.

SOME ISSUES CONCERNING THE INVESTIGATION OF CRIMES COMMITTED IN THE ATO AREA

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Kherson State University

This article considers some problems of implementation of the criminal procedure law of Ukraine faced by investigators and prosecutors during a pre-trial investigation in terms of armed conflict. Classification of obstacles that arise during the pre-trial investigation of crimes committed in the territory of the counterterrorist operation is determined and possible ways to overcome these problems are proposed.

Particular attention of jurists today is paid to the problems of application of criminal and criminal procedural legislation in terms of ATO. From independence to 2014, Ukraine has never faced the situation of long mass armed conflict in its territory. However, the establishment and activities of illegal armed groups in the Donetsk and Luhansk regions led to the so-called "hybrid war", and therefore the government was forced to announce the counterterrorist operation in these areas. This conflict has led to a large number of not only political, social and economic problems but also legal ones.

So the article covered only a small part of the problems faced by investigators and prosecutors during the pre-trial investigation. Of course, it is much more, starting with the first step – entering data to the Unified Register of Pre-Trial Investigations. Some steps towards their solution at the legislative level have been done, but much of them still need the attention of legislators. It is necessary to make changes that would simplify the work of investigators and minimize abuses such as an increase in terms of information verification on which it became aware of the offense; increase in terms of pre-trial investigation; simplification of the procedure of accession to the materials of criminal proceedings of evidence, and other changes that have practical importance for making a fair decision by judge.

SECTION 6
COURT PRACTICE IN CRIMINAL PROCEEDING

FEATURES OF THE INSTITUTE OF LAWFUL ARREST OR DETENTION OF A PERSON FOR NON-COMPLIANCE WITH LAWFUL ORDER OF A COURT OR IN ORDER TO SECURE FULFILMENT OF ANY OBLIGATION PRESCRIBED BY LAW

Volkov K.D., Postgraduate Student,
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The article is devoted to the investigation of features of a lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure fulfilment of any obligation prescribed by law.

Considering the stated in the article, the criteria of use of the institution of the lawful arrest or detention of a person for non-compliance with lawful order of a court or in order to secure fulfilment of any obligation prescribed by law, are: 1) a person has a duty to perform specific and concrete obligation that he or she not fulfilled up to this point; 2) commitment should arise before the arrest or detention of a person; 3) must be complied a fair balance between the importance of immediate fulfilment of assigned by the court person's obligation and the need to respect his or her right to freedom; 4) important factors of ensuring this balance is the nature and purpose of the obligation, the detained person, the specific circumstances that have led to the detention, and the detention duration; 5) and therefore the court when deciding on arrest or detention shall consider the following factors: the nature of the obligation arising from the relevant legislation and, in particular, its main purpose and objectives; the person being detained, and the specific circumstances that have led to the detention; the length of stay of the person under detention; 6) there should be a fact of failure to comply obligations and the detention should be carried out in order to ensure its implementation, and such a measure cannot have a punitive character; 7) as soon as the relevant obligation is fulfilled, the basis for the detention disappears.

FEATURES OF PROCEDURAL STATUS OF VICTIM AT THE REVIEW OF COURT DECISIONS IN THE APPELLATE ORDER

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The article is devoted to the specifics of normative regulation of procedural status of a victim in the appeal proceedings.

In terms of building a democratic and constitutional state in connection with the adoption of the new Criminal Procedure Code of Ukraine and judicial and legal reform in the country, especially important is the issue of timely maintenance, protection and effective restoration of the rights, freedoms and legitimate interests of victims in criminal proceedings; creating and improving not only security system but also procedural mechanism for the enforcement of rights of a person injured by a criminal offense. In this regard, the current criminal procedural law must guarantee the activity of the victim during the preliminary investigation and court proceedings, including the revision of judgments in the appellate procedure. This, in turn, necessitates a radical reforming the domestic legislation to bring it into line with the European human rights standards.

Based on the above study of specific problems of the implementation of procedural activities by the victim and his representative as independent participants at this stage of the criminal proceedings, it can be concluded that the current criminal procedural legislation regulating outlined issues requires further thorough improvement in order to properly protect the rights, freedoms, and legitimate interests of persons injured by criminal offenses.

PROBLEMS OF ENFORCEMENT OF APPLICANT RIGHTS IN CRIMINAL PROCEEDINGS

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The article considers problems of enforcement of guaranteed by the criminal procedural legislation rights of a person applied to a public authority authorized to initiate a pre-trial investigation, which regulate its activity within the criminal proceeding as a subject of criminal procedural relations. A procedure of this powers' exercise is highlighted and appropriate amendments to the legislation are proposed.

Thus, a person filed a complaint or report of a crime to a public authority authorized to initiate a pre-trial investigation, has the least group of rights among all participators of a criminal proceeding.

However, even having such a small amount of procedural powers the applicant is not possible to use them and enforce properly as it is prescribed by the criminal procedural law.

The cause of such a procedural barrier concerning enforcement by the stated subject of his powers is the lack of proper conditions for the observance of rights, liberties, satisfaction of necessary interests, their inviolability through a clear regulation of criminal procedural relations, and adoption of appropriate amendments to the legislation, which would determine, firstly, the document, which the applicant could receive after the acceptance of his criminal complaint; secondly, what things or documents the applicant can provide as a confirmation of unlawful acts of an offender; thirdly, the procedure of appropriate information of the applicant on the result of the complaint consideration and the result of the pre-trial investigation, and taking legal actions in order to avoid entrenchment on the rights conferred to him as a full-fledged participant of the criminal proceeding.

CHARACTERISTICS OF SOCIO-ECONOMIC FACTORS OF JUDGMENTS' NON-EXECUTION (ART. 382 OF THE CRIMINAL CODE OF UKRAINE)

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The article is devoted to the investigation of socio-economic factors of non-execution of judgments. Distinguished and analyzed such base criminogenic socio-economic factors as the lack of development of market economy mechanisms and miscalculations in reforms, high level of unemployment, low level of labour remuneration, poverty, significant wealth divide, and hyperinflation. Established their connection with the non-execution of judgments.

Non-execution of judgments is one of the most common crimes against public justice. They undermine the state ability to protect rights, liberties and legal interests of its citizens, bring to naught the right to a fair trial, and destroy the concept of a constitutional state as such. Therefore, the fight against it is one of the prospective tasks on the stage of modern state formation in Ukraine.

The purpose of the article is to reveal, describe and explain the main socio-economic factors of non-execution of judgments in Ukraine.

Thus, summing up the above mentioned in the article, it should be stated that socio-economic factors of non-execution of judgments have a non-specific, generally social nature. However, an intensity of their influence on the society criminalization in modern conditions makes us to advert to their description, explanation and development of measures against their spreading in view of separate criminological investigations and concrete directions of preventive practice as well. Thus the non-specificity of their socio-destructive importance concerning the criminality's determination does not rule out a possibility of an accented influence on them in terms of specified criminological tasks, including the counteraction of dissemination of the non-execution of judgments.

ON THE ISSUE OF CRIMINAL LIABILITY FOR THE NON-EXECUTION OF THE INTERNATIONAL CRIMINAL COURT DECISIONS

Moroz V.P., Degree Seeking Applicant
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The article considers the issue of possibility of establishing a responsibility for the non-execution of judgments of the International Criminal Court in the criminal legislation of Ukraine. The attention is paid to the imperfectness of a criminal legal protection of execution of international judicial bodies' decisions.

Long-term non-expansion of the International Criminal Court's jurisdiction to the territory of Ukraine can lead to the arbitrariness and impunity of persons that today purposefully use a weapon against civilian residents and civil objects, resort to murders and tortures of captive military personnel in the territory of our state. In the international judicial bodies and constitutional states such persons are considered as dangerous special criminals and thus their punishment should be severe and irreversible.

Actually the accession of Ukraine to the Rome Statute will approach Ukraine to the standards of the United Nations, Council of Europe and the European Union in the field of the supremacy of law and observance of human rights on combating severe crimes threatening peace, security and well-being and causing a concern of the whole world community, as well as promote a proper enforcement by Ukraine of the obligations according to the Ukraine–European Union Association Agreement. Also the extension of the International Criminal Court's jurisdiction to the territory of Ukraine concerning crimes committed from the beginning of the armed conflict in the Donetsk and Luhansk regions and also during the protest movements during the period from the end of November 2013 to February 2014 will effectively promote not only the bringing guilty persons to responsibility but also the prevention of commission in the territory of Ukraine of crimes against humanity and war crimes in the future. Given the above, the establishment of criminal responsibility for the non-execution of this international court body's decisions remains prospective. However, the issue of legal construction of this criminal legal norm taking into consideration the necessity of providing protection for decisions' enforcement in Ukraine of not only the International Criminal Court but also other international judicial bodies, whose decisions are enforced according to the international agreements, consent to obligation of which is given by the Verkhovna Rada of Ukraine, needs further research.

REGULATORY INFLUENCE OF THE ADMISSIBILITY OF EVIDENCE'S INSTITUTION FUNCTIONS ON THE FIRST-INSTANCE COURT AUTHORITY IN CRIMINAL PROCEEDINGS

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The article is devoted to the problem of interrelation of the first-instance court authority and the functions of admissibility of evidence's institution in the criminal proceeding. Relevance of this issue is caused by new laws of the legislative regulation of the admissibility of evidence's institution and ambiguous approach to this issue in the science of criminal procedure.

Admissibility as one of the obligatory and important features of evidence (at any case from the point of view of modern acknowledged doctrine of a criminal procedure) naturally paid attention to the scientific thought, which was being formed by scientists of various epochs. In different times the problem of admissibility of evidence was considered in one way or another by many scientists. For today this theme is not exhausted and also continues to raise numerous questions in the theory and practice as well.

Thus, the court of first instance in the criminal proceeding, enforcing vested on it powers is that necessary subject that ensures an implementation of functions of the admissibility of evidence's institution, thereby performs approval of principles and execution of tasks of the criminal procedure. Instead, functions of the admissibility of evidence's institution in connection with the abovementioned make their regulatory influence on the first-instance court's activity in the criminal procedure. Consequently, it is possible to assert that this connection is interdependent and mutually conditioned.

IMPOSITION OF PUNISHMENT IN THE PRESENCE OF MITIGATING CIRCUMSTANCES OR AGGRAVATING CIRCUMSTANCES, AND SOME PROBLEMS OF JUDICIAL DISCRETION

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The article considers problematic issues during the imposition of punishment in the presence of mitigating circumstances or aggravating circumstances. It is proposed to improve the criminal legislation of Ukraine in the part concerning further concretization of criminal legal meaning of mitigating circumstances or aggravating circumstances, and limitation of judicial discretion while imposing punishments.

The authors of this article consider that in the presence of mitigating circumstances, the term or amount of punishment should as if to "move" from the "initial measure of punishment" to the minimal term or amount of punishment, and in the presence of only aggravating circumstances – from the "initial measure of punishment" to the maximum term or amount of punishment. In the presence of both mitigating circumstances and aggravating circumstances the term or amount of punishment should be equal to the "initial measure of punishment" (in the case of their equal number) or to be close to it (a concrete term or amount close to the "initial measure of punishment" is imposed by the court on the basis of its discretion depending on the proportional correlation between the amount of mitigating circumstances and the amount of aggravating circumstances).

Such an approach to the legal concretization of mitigating circumstances and aggravating circumstances will allow in full measure to limit the judicial discretion while imposing punishments, but at the same time it does not deprive the court of the opportunity to individualize as much as possible the punishment to a particular person.

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