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CONTENTS

J21318-001	THE IMPACT OF DECISIONS OF INTERNATIONAL JUDICIAL BODIES OF THE NATIONAL LEGAL SYSTEMS OF THE STATES	Volosjuk P.V. The North-Caucasian Federal University Stavropol, Pushkin 1, 355009
J21318-002	VALUE AND ROLE OF THE AUXILIARY REPRODUCTIVE TECHNOLOGIES IN THE LAW OF SUCCESSION OF RUSSIA	Kirillova E.A. Moscow Modern Humanitarian Academy (BF), Bryansk, Fokina St., 108A, 242611
J21318-003	THE ARAB WORLD INTEGRITY CRITERIA	Fartushnyak S. Y. Evpatorian faculty of Kharkov Institute of Market Economy and management, Evpatoria, 60 years of VLKSM 30, 97400
J21318-004	THE CONCEPT OF BUSINESS REPUTATION OF LEGAL ENTITY	Fedyuk L.V. Law Institute Pricarpathian National Univ. V.Stefanik ,Ivano-Frankivsk, Shevchenko street, 44a
J21318-005	SOME PROBLEMATIC ASPECTS OF THE NEW LAW OF EDUCATION	Belonogov A.V. Yelabuga Institute of Kazan Federal University
J21318-006	CURRENCY REGULATION: FOREIGN EXPERIENCE	Dyachenko A.V. Department for Organized Crime Control of Chief Office at the Ministry of Internal Affairs of Ukraine in Donetsk region, Donetsk, Izyumovskaya, 5, 83062
J21318-007	INDEPENDENCE OF THE JUDGES AS ESSENTIAL PART OF INDEPENDENCE OF THE JUDICIAL POWER	Zarovneva G.S., Filippova A.O. Far Eastern Federal University
J21318-008	TYPICAL MISTAKES OF FORENSIC BALLISTICS	Yarovenko V.V. Far Eastern Federal University
J21318-009	KING FRIEDRIC WILHELM III AND THE ELECTIVE RIGHTS OF THE PRUSSIAN CITIZENS IN THE EARLY XIX CENTURY.	Bokov J.A. Volgograd State University, Volgograd, University Prospect, 100, 400062
J21318-010	VALUE OF ETHICAL STANDARDS AT INVESTIGATION OF "TAX CRIMES"	Borovkov A.V. FGAOU VPO "Volgograd State University"
J21318-011	FEEDBACK CHAPTER OF THE SUBJECT OF THE RUSSIAN FEDERATION AS A MEASURE OF CONSTITUTIONAL AND LEGAL LIABILITY	Chunikchina T.N. Kuban State Technological University, Krasnodar, Moskovskay 2, 350000
J21318-012	THE VOTING RIGHTS OF PRUSSIAN CITIZENS (1815 - 1849)	Bokov J.A. Volgograd State University, Volgograd, University Prospect, 100, 400062
J21318-013	ISTORIOLOGIJA OF A SPRING BASE OF LANGUAGEPOLITICS AS KRATOLOGITSHCNOGO OF THE PHENOMENON	Savojska S.V. Kyiv national university of building and architecture 03680, Kyiv, Air force boulevard, 31
J21318-014	REQUIREMENT TO CONSIDER THE HISTORICAL AND OTHER LOCAL TRADITIONS OF LOCAL GOVERNMENTS (ILLUSTRATED REPUBLIC OF BASHKORTOSTAN)	Usmanova R .M. Sterlitamak Branch of Bashkir State University,Sterlitamak, Lenin Str. 47.
J21318-015	SYSTEMATICITY IN STRATEGIC PROGNOSTICATION OF THE USA FOREIGN POLICY	Rzhevsk National Aviation University, Kyiv, Kosmonavta Komarova ave. 1,03680
J21318-016	PLACE AND ROLE OF THE MORAL LEGAL STATUSES DEFINING LEGAL STATUS OF THE PUBLIC PROSECUTOR'S WORKER IN THE RUSSIAN FEDERATION	Borovkov A.V. FGAOU VPO "Volgograd State University"
J21318-017	BASES OF UKRAINE'S GEOPOLITICS (1990–1993)	Yaroshko O.Z. Institute of Social and Political Psychology of the NAPS of Ukraine

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J21318-018	SOVIET STATE AND RELIGIOUS ASSOCIATIONS DURING UNLEASHING OF ANTIRELIGIOUS CAMPAIGN (OCTOBER 1958 – MARCH 1961)	Krikun V., Podgorny V. Belgorod University of Cooperation, Economics and Law ul. Sadovaya 116A, Belgorod 308023
J21318-019	ON EMERGENCE OF THE IDEA OF THE GLOBAL STATE IN ANCIENT WORLD	Zaitseva I., Shabalina E. Belgorod University of Cooperation, Economics and Law
J21318-020	DEFECTS IN THE DRAFT LAW AS A FACTOR IMPROPER LEGAL REGULATION AND THEIR CLASSIFICATION	Belkin L. Консалтингова фірма «Аналітик», Донецька область, Україна
J21318-021	PROBLEM ISSUES OF LEGAL LIABILITY FOR OFFENCES IN THE SPHERE OF AGRICULTURAL WASTE TREATMENT	Kudrina I.I., Butrim A.V. National University of Life and Environmental Sciences of Ukraine, Kyiv, Heroyiv Oborony 15, 03041
J21318-022	RULE OF LAW STATUS OF INSURANCE ORGANIZATIONS ON THE LAW OF THE RUSSIAN FEDERATION	Kolesova T.S. Belgorod University of Cooperation, Economics and Law, Belgorod city, Sadovaya street, 116a
J21318-023	ORGANIZATION AND LEGAL REGULATION OF DOMESTIC PRE-REVOLUTIONARY PENSION (THE CASE OF PENSION OFFICE OF PEOPLE'S TEACHERS AND TEACHER)	Levshuk M.V. Belgorod University of Cooperation, Economics and Law Russia, Belgorod, st. Garden, 116a
J21318-024	SOME FEATURES OF MAKING A REINSURANCE CONTRACT	Poberezhnaya I. Yu. Belgorod University of Cooperation, Economics and Law Belgorod, Sadovaya street, 116a, 308023
J21318-025	LEGAL PROBLEMS OF COMMERCIALIZATION OF R&D RESULTS IN UKRAINE	Simson O.E. National University " Yaroslav the Wise Law Academy of Ukraine", Kharkov, Pushkinskaya str. 77, 61024

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J21318-001

UDC 341.64 **Volosjuk P.V.**

THE IMPACT OF DECISIONS OF INTERNATIONAL JUDICIAL BODIES OF THE NATIONAL LEGAL SYSTEMS OF THE STATES

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In this report examines the problem of the influence of the decisions of international judicial bodies on the development of national legal systems in the conditions of globalization processes.

Key words: globalization, internationalization, international suture, legal systems of the States, the universalization and regionalization of the law.

The trend towards a single world order outlined in the beginning of XX century. Even then, lawyers have pointed to the need for a review of national legislation with a view to the adoption of "universal rights" common to all mankind (1).

Creation of the International Bill of Human Rights, the first act of which was the Universal Declaration of Human Rights, was the beginning of a new stage in the development of international relations - stage of universalization of international and national law in the field of human rights.

The globalization of the world economic space defined process of unification of law, which gave the state a much lower value than the natural sciences. As a result, this has led to an inadequate approach of States to address the same issues. At the time, a similar idea was expressed by UN Secretary General Kofi Annan: "... international mechanisms that are particularly important in solving planetary problems, do not meet the requirements put forward by globalization."

The globalization of international relations directly influences the development of international law. It is carried out in the following areas: First, an increasing number of actors in international economic relations through the creation of new international organizations, the emergence of new regional economic and political

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alliances, and secondly, the creation of new areas of law and that both international and not national, in- Third, globalization creates a number of new global threats to humanity, the answers to which require a global effort, and, therefore, an appropriate international legal clearance.

In the process of globalization, the state, defending national interests, however, at the same time agree to limit their sovereign rights. According to VA Kartashkin is limiting the power of the state in the field of human rights is inevitable. Its functions are increasingly taking on a variety of international and supranational bodies (2).

Simultaneously with the process of globalization in international law is developing another trend - regionalization - the emerging trend on the global section of the regional system of cooperation in order to address emerging relations in the framework of relations and conflict resolution. In modern legal literature globalization opposed regionalization. However, representatives of the other's (8) argue that regionalization is only one stage in the process of internationalization and globalization.

One characteristic of regionalization is the formation of the "special law enforcement" among States Parties integration, which is not contrary to international law, but rather elaborates on some of its provisions. This right penetrates into the national legislation of the State to form a single legal system.

The above international processes require the creation of international institutions for the resolution of disputes arising from the global problems of social relationships.

One example of the creation of such institutions is the adoption of the Statute of the International Court of Justice. International Court of Justice, the principal judicial organ of the United Nations. It was formed in 1945. Structure, powers and procedures determined by the Statute, which forms an integral part of the UN Charter, which makes all UN member states are parties to the Statute. The main task of the International Court of Justice is to solve based on international law cases (international disputes), referred to it by the parties (states only), and only with the consent of all the parties in dispute. UN member states are entitled to declare their

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acceptance of the jurisdiction of the International Court of Justice, which is obligatory for some legal issues, or make removal from the jurisdiction of the court of certain categories of disputes. Decisions are binding only for the states involved in the dispute, and only in this case (3). The idea of establishing an international court designed to hear cases of war crimes, was first expressed after the First World War, at the Versailles Peace Conference in 1919. Provided for the establishment of such a body reached an agreement at the conference as a way to bring to justice the Kaiser Wilhelm for the war by Germany (4). Proposal for the establishment of a permanent international criminal court was put forward after the Second World War. United Nations first addressed this issue in 1948.

A milestone in the history of the establishment of a permanent court was the UN Security Council two tribunals ad hoc - the International Tribunal on 25 May 1993. for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991., and the International Criminal Tribunal on 8 November 1994. for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other violations committed in the territory of neighboring States between 1 January 1993. December 31, 1994.

July 17, 1998. Rome Diplomatic Conference of Plenipotentiaries on the UN adopted the Rome Statute of the International Criminal Court will be empowered to investigate the crimes of genocide, aggression, crimes against humanity and war crimes and to prosecute the perpetrators.

According to the Decree of the President of the Russian Federation of 08.09.2000 № 394-p Russia signed the Rome Statute of the International Criminal Court, thus expressing his approval of the general idea of the creation of this body, its goals and objectives. However, to date the document has not been formally published and has been ratified. The reason, the Russian researchers call the factors that characterize different aspects of the problem: constitutional law, international law, criminal law and criminology (5).

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Establishment of the International Criminal Court was one of the achievements of the international community. According to scientists, the establishment of a permanent body of international criminal justice has a double meaning (6). First, to ensure the inevitability of punishment in practice will help prevent crime and promote international peace and security. The International Criminal Court is able to increase the overall level of law in the international community tends in achieving the statutory objectives of the United Nations to enforce international law and justice. Second, the practice of the International Criminal Court, is able to create a set of unwritten rules of international criminal law, which, together with the provisions of bilateral and multilateral treaties (created based on the UN model treaties on international cooperation in criminal matters) will contribute to the harmonization of penal systems across the world Community. Requirements of good faith compliance with the rules of international criminal law are the responsibility of the existing body of international justice - the International Criminal Court.

As noted in a number of documents of the UN, the ICC "is a key element of an emerging system of international criminal justice, which includes the national courts, international courts and hybrid courts, which have both a national and international components. These organs of international justice are closely linked with the efforts to establish and maintain international peace and security "(7). Progress at the regional level was the creation in 1959 of the European Court of Human Rights in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, the mechanisms of implementation of rights and freedoms. For the first time in international practice, the court found the individual subject of international relations, and he was granted the right of direct appeal to the court.

Creation of the European Court of Human Rights contributed to the revision by the Member States of the Council of Europe in terms of its position absolute state sovereignty.

"The general market - not just a huge economic area, this quiet revolution." These words Delors, can be attributed not only to a radical change in Europe, but also

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to the right. And then he goes on: "In the near future, most of our legal system will be developed in Strasbourg" (8).

In the current phase of the European Court of Human Rights, its decisions with precedent, influence and shape the national law doctrine of European law. Data management decisions in daily practice and the national courts of the States members of the Council of Europe.

The Committee of Ministers of the Council of Europe in 2004, in its recommendations repeatedly explained the order of application of the Convention for the Protection of Human Rights and Fundamental Freedoms, "A necessary condition for the effective protection of human rights in Europe by the Convention is that States apply it in their legal systems as it is understood in the European Court of Human Rights. In another recommendation, the Committee of Ministers noted that "the courts and the executive branch with all great respect to the case law of the European Court of Human Rights in the application of domestic law (9). Decisions of the European Court of Human Rights to provide ever-increasing impact on national legal systems of European countries. During the period of the Strasbourg supervisory mechanism, States Parties to the Convention to take measures of a general nature, making up the complaint to the European Court of Human Rights, the relevant amendments to its legislation "(10).

For example, in accordance with the decisions of the European Court of Human Rights, in: Austria changed the Code of Criminal Procedure, Belgium amended the Criminal Code, the law on vagrancy, Germany had changed the position of the Criminal Procedure Code relating to pre-trial detention, adopted various measures to expedite criminal and civil cases and legally recognized sex change, the Netherlands amended the Code of Military Crimes and the law on detention of persons with mental illness; Ireland simplified trial procedure and the system of civil legal aid and consultations, Italy, was introduced a new Code of Criminal Procedure, under which changed the law governing the detention of suspects, Sweden passed legislation regulating the issuance of building permits, and entered the order of judicial review of government decisions, Switzerland has made changes to the Code of Military

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Crimes and completely revised the organization of the judicial system and the criminal justice process in relation to the federal army and the Criminal Code in respect of imprisonment in detention centers, the United Kingdom changed the law in areas such as freedom of information, protection of privacy, prison rules legislation on mental health care and compensation for unfair administration of justice at the administrative level (11).

The above examples, where the States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms made changes to its legislation, demonstrate the impact of the activities ¬ quences European Court of Human Rights in the national legislation of the Member States of the Council of Europe.

It may be noted that as a consequence of the European Court of Human Rights for the national legal system may be considered:

1. measures taken by the state to bring the situation to its previous state. This individual measures aimed at the elimination of the violation in relation to a particular person;

2. measures taken by the state to prevent further violations of the Convention. In turn, they can be roughly divided into the legislative and practical. Legislative measures are applied, if the decision of the European Court of Human Rights found that the applicable law in violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, and that the practical and administrative measures will not be enough to change practice. Practical measures can be quite varied, letter and executive instructions prohibiting the use of certain provisions of the law to ghosts law under the Convention, explaining how to interpret national law in the light of the Court's decisions, informing law enforcement of the decision, bring it to the competent and the requirement of the application of national legislation in the light of the interpretation given by the Court, the application of the Court's decisions directly in similar cases. As for the validity of decisions of the European Court of Human Rights, the Committee of Ministers of the Council of Europe

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recommended that States parties to bring national legislation and practice into line with the practice of the European Court of Justice.

The influence of the European Court on the legislative activities of the Council of Europe and can be seen in their use of the constitutional courts. At the XII Congress of the European Conference of European Constitutional Courts, held in Belgium in May 2002. Noted that 21 of the 44 authorities declared opposition guided by the decisions of the Court in making its decisions. The rest said an increasing role in their activities rulemaking European Court of Human Rights. According to the Chairman of the Constitutional Court of VD Zorkin, by virtue of Art. 32 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Court of Human Rights has the right to decide all matters concerning the interpretation and application of the Convention and its Protocols. Therefore, the legal position of the Court, expounded in the decisions as to the interpretation of the Convention's provisions, as recognized by the Russian Federation are binding (12).

Finally, we note an increasing role of international courts in the legislative process and practice, the assignment of some of their sovereignty in favor of the universal or regional international organizations (international judicial bodies in particular). International court at present owns one of the leading roles in the settlement occurring in the world of globalization. International courts play the major role in the globalization of the legal space. It's safe to say that globalization is irreversible and legal space has already taken place.

References:

1. Puskas V. The implications of the outcomes of inter-state courts for the right-применительной the activities of the bodies of state // Globalization, state-in, right, 21st century (on materials of the Moscow law of the forum). – M., 2004. P. 122-124.

2. Kartashkin V.A. Human rights in the globalizing world // the Globalization, the state, the right, the 21st century (on materials of the Moscow law forum). M., 2004. – P. 87.

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3. Блishenko V.I. Globalization and international law // the Globalization, the state, the right, the 21st century (on materials of the Moscow law of the forum). M., 2004. – P. 19.

4. Podshibykin A.S. The international criminal court and the problem of national legislation // International criminal proceedings. - 2008. – № 1.

5. Vedernikov O.N. To the question of the ratification of the Rome Statute of the inter-national criminal court // International criminal proceedings. - 2008. – № 1.

6. Kudryavtsev V. International criminal law. - M., 1999. – P. 371.

7. Report of the International criminal court for the year 2004. UN document / A/60/177. 1 August 2005.

8. Zhdanov YU.N., Лаговская E.S. The European criminal law. - M., 2001. - P. 21.

9. Application of the Convention on the protection of human rights in the courts of Russia // the Series of international protection of human rights. - Ekaterinburg, 2006. - Vol. 6. - P. 17-18.

10. Berestnev U.U. Impact of the practice of the European Court of human rights on the reform of the national legal systems // Russian justice. - 2001. - № 12. - P. 65.

11. Human rights: a constant challenge of the Council of Europe. - M., 1996. - P. 13-14.

12. Zorkin V.D. The role of the constitutional Court of the Russian Federation in the implementation of the Convention on the protection of human rights and fundamental freedoms // Comparative constitutional review. - 2006. - № 1. - P. 36.

J21318-002

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VALUE AND ROLE OF THE AUXILIARY REPRODUCTIVE TECHNOLOGIES IN THE LAW OF SUCCESSION OF RUSSIA

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In this report influence of widely applied auxiliary reproductive technologies on gradation of blood and social relationship in the law of succession of Russia is considered.

Key words: relationship theory; property relations; motherhood; paternity; auxiliary reproductive technologies.

To date many spores and questions cause an inheritance by law, because the circle of heir-at-laws broadened considerably, the account of interests of all domestically-family clan had been expressed in establishment to ГК of Russian Federation of eight turns of inheritance(articles 1142-1148 the Civil code of Russian Federation).

The succession of rights by law is founded, mainly, on a cognation, under that blooded connection of persons what be going on from a general ancestor is understood. First of all to the inheritance the most near are called to giving an inheritance people are a spouse, children and parents of giving an inheritance. Id est first of all, except a spouse, the relatives of giving an inheritance are taken into account on the line of ascending and descending line.

In the middle of 60th, twentieth century scientists (Lévi-Strauss Cl. [13], Rulan of N. [9] et al), again appealed to perfection of theory of cognation. Later this theme did not lose the actuality in the end XX - beginning of XXI v.v. abroad a few monographs appeared and large collective works(Testard 1996[14]; Parkin 1997[15]; Dziebel 2007[12]), in Russia with 1995 an almanac is published "Algebra of cognation"[1].

Conditionally within the framework of meaningfulness for a probate law it is possible to distinguish three basic theories of cognation: biological, social and biologically-volitional. The biological theory of cognation expresses a look to the cognation only as on blooded connection between people [4], within the framework of this theory adoption was examined only as the legal relationship equated with paternal relations, but being not base on cognation [11].

In spite of domination of biological theory, separate scientists continued to adhere to social (formal) conception of cognation, acknowledging that the last (at

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least, in legal sense) is public connection between persons [2]. Confession after close social connections of legal character of cognation was reflected, foremost, on interpretation of institute of adoption.

Firstly, exactly as a cognation must be examined such adoption at that parents is written down as parents of child (for a right exactly such they the same and become).

Secondly, unlike other forms of device of children remaining without the care of parents, the consequences of adoption matter not only for a family law but also for other industries(for example, inheritance), and self adoption, by general rule, permanently and does not cease even after an achievement the child of full age.

Thirdly, by adoption not only legal but also actual close relations are created, frequently even to legal registration of adoption, when a child considers guardians the parents.

Fourthly, adopted and their posterity in relation to guardians and their relatives equated with relatives originally [3].

In 1970th Palastina S. Offered the biologically-volitional theory of cognation, in that at establishment of maternity and paternity a constituting factor is a biological, blooded origin of child. However for filiating of child of unmarried woman two founding is needed: naturally-biological and volitional [8].

The researchers of the systems of cognation deal with three basic spheres: by the methods of origin and inheritance; by the forms of marriage; adjusting of relations by means of taboo on incest. Next positions are thus taken into account:

1. Blooded connection of persons what be going on one from other or from a general ancestor confesses a cognation or family connection. Founding of origin of blood relation is a biological origin, i.e. the birth confirmed in the order set by a law. A blood relation, as a legal fact, not necessarily comes forward only on condition of his registration.
2. For a cognation the structure determined by his degree is characteristic. Thus blooded connection of persons confesses a cognation or family connection, family connection is prepotent in relation to the relatives of the nearest degree and is to more weak in relation to relatives distant

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degree. Therefore a law gives the special rights the relatives of the nearest degrees of cognation, lays certain duties and sets separate prohibitions, exactly by family connection.

In a legislation and modern literature a cognation is examined in wide sense, as a biosocial category, Melnikova M.P. considers that, in the theory of probate law along with a concept a blood relation must be used concept cognation social [7], acceding to this position, it should be noted that, this concept requires a more working-out, rethinking and exact formulation taking into account modern realities.

As justly mark Zubrilova O.A., Tanimov O. B. [5], the wideuse of modern medical technologies does not allow more to link the origin of child that is given by a legal value, only with a biological origin - blood relation. They mark thus, that modern right, being totality of traditional norms unable sometimes to regulate relations existing outside "legal frameworks".

There are most relations in the near future, it will be needed to control and regulate another ways, supposing introduction of elements of convention, possibility of application in a today's right for the theory of legal fictions. In this sense there are artificial methods of reproduction of man: substitute maternity; impregnation of in vitro - it and there is fiction.

The artificial methods of reproduction of man as legal fiction exist after fixing in Bases of legislation about the health care of citizens [10], where a right for every adult woman of genital age is envisaged on the impregnation of in vitro and implantation of embryo, and also rules of these procedures. In a certain measure a blank is filled in legislation, regulative legal relationships in the field of "reproduction of man" on the whole.

The use of all resources of increase of birth-rate became important in a modern unfavorable demographic situation, innovative, effective, being in demand industry - reproductive medicine appeared in this connection. By means of modern auxiliary reproductive technologies from incomplete data to beginning of the XXI century in more than 2 million persons were the world born already.

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However socialization of this question plugging of him in the subject field of right runs into the row of problems. For example, in Costa Rica application of auxiliary technologies officially illegal as defeat a national constitution(because begin human life with an artificial impregnation, and then destroy her at reduction) and it only is one country with the Resticortum laws. The most strict limitations contain the German laws "On mediation at adoption"(1989) and "About defense of human embryo"(1990), Italian "Norms, touching a medical assistance to procreation"(2004) that forbid the donor ship of gametes and embryos, substitute maternity, and also reduction(partial abortion) at a multifetation almost fully.

In opinion of some researchers, a cognation arising up as a result of birth of children by means of methods of auxiliary technologies is simply a cognation social, Kirirchenko C. [6], analysing the norms of Domestic code of Russian Federations, notices that a legislator did not envisage the features of realization, change or stopping of paternal rights and duties for parents, resorting to auxiliary technologies as compared to the parents of the child born by a traditional method and draws conclusion, that a legislator acknowledges a cognation biological and social.

Melnicova M. [7], investigating the grounds of probate laws of children post mortem parents, proves that under a social cognation it is necessary to understand a cognation arising up as a result of birth of children by means of implantation of embryo and artificial impregnation.

Unfortunately, there are a bit researches of examining auxiliary technologies within the framework of probate law to date, but to confirm or refute conclusions about a social cognation that arises up as a result of birth of child by means of reproductive technologies, it is necessary to analyses the methods of auxiliary technologies.

As justly marks Kirirchenko C., today to the question about a concept, grounds of origin and nature of cognation development of auxiliary reproductive technologies, allowing disconnecting the processes of conception, maturing, birth and education of child, compels to return [6].

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Thus, one of issues of the day, taking into account the origin of innovative industry - reproductive medicine, when scale application of auxiliary methods does not allow more to bind the origin of child only to the biological origin, there is a necessity clearly to define the concept of blood and social relation in accordance with modern realities.

References:

1. Almanac "Algebra of relationship: Relationship. Relationship systems. Systems of terms of relationship" (the originator and editor-in-chief V.A.Popov) was conceived as a year-book. 14 of its releases are so far published and three releases are prepared press.
2. Vebers Ya.R.Rodstvo as the basis of emergence of the rights and duties on the Soviet family and civil law. - M, 1963.
3. Vebers Ya.R.Sushchnost and legal consequences of adoption//Legal questions of a family and education of children. - M, 1968. – Page 114-117.
4. Vorozheykin E. M. Family legal relationship in the USSR. - M, 1972. - Page 23; 12 .
5. Zubrilova O. A. Tanimov O. V. Artificial methods of a reproduction of the person in a century of a total sotsiologizatorstvo: questions of a corporality and legal aspect//Anthropological examination of the Russian legislation. Materials of the All-Russian scientific and practical conference (on February 11-12, 2005). - Kazan: Publishing house "Taglimat", 2005. - Page 190-194.
6. Kirichenko K.A. Evolution of understanding of relationship. Messenger of NSU. Series: Right. 2007. T.3. release 2.
7. Melnikova of L. S. Inheritance under the law in Russia from the code of laws to the civil code of RSFSR of 1964 (historical and theoretical aspect). - Stavropol. 2001. -20 pages.
8. Palastina S. Ya. Bases of emergence of the parental rights and duties//Jurisprudence. - 1973. - No. 6.
9. Roll of N. Legal anthropology. – M, 2000. - Page 84.

URL: http://www.sworld.com.ua/e-journal/J21318.pdf
Downloaded from SWorld. Terms of Use http://www.sworld.com.ua/index.php/ru/e-journal/about-journal/terms-of-use

10. The federal law of July 22, 1993 No. 5487-1 of the Basis of the legislation of the Russian Federation about health protection of citizens//Sheets of Council of People's Deputies and the Supreme Council of the Russian Federation. – 1993. - No. 33. - Art. 1318.

11. Shakhmatov of Accusative, Haskelberg B. L.Novy the code about marriage and a family of RSFSR. - Tomsk, 1970. – Page 56.

12. Dziebel G.V. The Genius of Kinship: The Phenomenon of Human Kinship and the Global Diversity of Kinship Terminologies. Youngstown;N.Y.: Cambria Press, 2007.

13. Lévi-Strauss Cl. Mythologiques. L'Homme nu. Paris: Plan, 1971. T. 4.

14. Testard A. La Parent Australienne: Itude Morphologique. P.: CNRS, 1996.Transformations of Kinship. Washington: Smithsonian Institution Press, 2000.

15. Parkin R.J. Kinship: An Introduction to Basic Concepts. Oxford: Blackwell, 1997.

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THE ARAB WORLD INTEGRITY CRITERIA

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In this article we consider the concept of "The Arab World" and "The Middle East" as well as the criteria integrating Arab countries as geopolitical, linguistic and religious space.

Key words: The Arab world, the Middle East, North Africa, Arab nationalism, Islam, Islamic factor.

Being one of the world's most conflictological region the countries of the Middle East and North Africa have been involved in the world politics and economy

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focus for some decades already. There are numbers of criteria giving the basis for the integrating of these countries under the inconsistent concept “The Arab World”.

In geographical sense “The Arab World” is not a uniform space. It includes 22 member countries of the Arab League, i.e. Algeria, Bahrain, Comoro Islands, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunis, the United Arab Emirates, Yemen and the Palestinian national administration; in a number of the countries (Comoro Islands, Djibouti, Mauritania, Somalia, Sudan) Arabs make up the population minority. There are also the territories of Ceuta, Melilla and Western Sahara with an undetermined political status.

These countries occupy the territory of North Africa and West Asia with the total area of 14 million km^2 that exceeds 10.5% of the globe’s territory. Thus, the Arab world is territorially compact and continuous: the territories of the Arab countries are located on the extensive space stretched from the Arabian (Persian) Gulf through the areas of South-West Asia and North Africa to the Atlantic coast.

The borders between the Arab world states were defined by the European colonial powers, proceeding the prospects of exploitation of the region’s economic resources, especially oil.

Having the disputable interpretation the geographical term “The Middle East” in its English-Saxon interpretation means the Arab countries of Asia and Africa, – as a matter of fact, the Arab world, – and also Israel. In the terminological sense the Middle East concept is not based on the principles of physical geography as it includes both Asian regions and African ones.

Otherwise the territories included into the concept are named as the Arab world, the Islamic world, the Mediterranean basin, etc. The concept of “The Middle East” originates from the history, geopolitics, culture and political economy. It has proved its viability and is the basic term for strategic analytical researches.

However, there are no standard political and geographical parametres of the Middle East. So, for example, the US State department refers the countries of North Africa, Levant, the Persian Gulf, excepting Turkey (as it is a member of NATO) to

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the Middle East. But the US Ministry of Defence divides the region in another way: the Central Command (CENTCOM) is responsible for the military operation conducting in the region including Afghanistan, CCASPG countries, Egypt, Ethiopia, Djibouti, Jordan, Iran, Iraq, Kenya, Pakistan, Somalia, Sudan, and Yemen. Israel, Syria and Turkey are included into the European Command (EUCOM) liability zone [6, With. 92].

The population of the Arab countries is connected by the common historical past: during the Middle Ages they were part of the Arab Caliphates; in the Modern history the territories occupied by the Arabs (except Morocco) were part of the Ottoman Empire; during the Modern times the Arab countries became the object of the European powers' colonial policy.

"The Arab world" concept is also defined through its consciousness approximately shown a century ago. Arab nationalism was developing under the influence of the Arab Education ideas.

Afterwards the Arab idea found the features of the national state project which was widely discussed in the political elite ranges of Arabia, Lebanon, Mesopotamia, Syria and Palestine, and then it also became a subject of the negotiations directed to separate this part of the Arab world from the Ottoman empire and to create a uniform Arab state in its territory. During the First World War the Arabs waged to realize this idea. Regardless of the residence Arabs considered and consider themselves belonging to the common nation.

After the First World War, under the actual division conditions of the Arab world between the Great Britain and France, having lost its Anti-Ottoman direction and having got anticolonial and anti-western character the Arab national idea began to change.

After the Second World War the Arab national idea becomes the central link in the national-liberation struggle ideology and starts to find the features in the Pan Arabian political project, aspiring to synthesis with pan Islamism.

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Thus, acquired as consciousness “The Arab world” concept is identical to “The Arab nation” concept aspiring to an embodiment of the Arab national idea and to creation of the uniform Arab state.

Linguistically the Arab world includes Arab-speaking countries of the Arabian Peninsula, North Africa and South-west Asia, but excludes Israel, Iran and Turkey. Its total area exceeds 10.5% of the globe’s territory. Arabic is mother tongue for 220 million people living in 22 Arab countries. It has been declared as one of the United Nations official languages in January, 1974. Arabic is also a language of the sacred book of Koran, so it is a liturgical language for almost one billion Moslems all over the world which makes 20% of the world's population [1, With. 32].

From the religious point of view about 90% of population in the Arab countries practice Islam. All Moslems make up one religious community – ummah, which doesn’t recognize state borders. In the modern world Islam continues to be an integral part of public consciousness in Muslim society. It’s a state religion as well as a fundamental legislative source. It carries out the functions of a social, cultural and economic regulator.

Economically Islam is a unique religion regulating both economic and daily life of Moslems by means of its norms. An important component of economic culture formation in the Arab countries is the support on the society developed traditions.

Islam influence also affects foreign policy. Some decisions and actions legitimization in view of Islam plays an important role in foreign policy process. It’s also typical for Moslems to feel the participation in a united religious community (ummah) without dependence from the residing in different countries, the features of their history, different ethnic belongings. Thus Islam performs uniting, integrating function.

The carried out analysis shows, the concept “The Arab world” can be considered from various positions. From the dominating (Arab) nation’s point of view the Arab world integrates the countries whose representatives consider themselves belonging to one nation. Researching the Arab world through the consciousness it is possible to define this concept as a language, cultural, religious and historical community. Thus,

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the countries of “The Arab world” represent the general geopolitical, linguistic, cultural and religious space having the world strategic and economic importance.

References:

1. Byasharova A.R. Razvitiye economitseskoy interatzii mezhdu arabskimi gosudarstvami: dis. …d-ra econ. nauk: 08.00.14 /Byasharova Adilya Rashidovna. – M., 2007. – 188 c.

2. Belousova K.A. Posledstviya neokolonialnoy politiki SSHA v Iordanii, Sirii i Livane vo vtoroy polovine 1950-x godov /K.A. Belousova //Arabskiye strani Bliznevo Vostoka: Istoriya i sovremennost. – M.: MGYP, 2000. – 370 c.

3. Vliyaniye traditsiy na economitseskoye rasvitiye arabskix stran na sovremennom etape [Elektroniy resurs]. – Rezhim dostupa: weblancer.net›download/portfolio…242551.doc. – Nazvaniye c ekrana.

4. Demchenko A.V. Vnutrenniye faktori formirovaniya vneshney polotiki stran Arabskogo Vostoka [Elektroniy resurs] /A.V. Demchenko //Vestnik MGIMO-universiteta. – 2010. – № 1(10). Rezhim dostupa: http://www.vestnik.mgimo.ru/index.php?option=com_content&view=article&id=179 . – Nazvaniye c ekrana.

5. Zhdanov S.V. Arabskie strani v mirovoy economike /S.V. Zhdanov. – M.: Panorama, 2006. – 256 c.

6. Panin V.N. Politicheskiy protsess na Blizhnem Vostoke: vliyaniye Rosiyskiy Federatsii i SSHA: dis. … doctora polit. nayk: 23.00.02 /Viktor Nikolayevitch Panin. – M.: RGB, 2005. – 275 c.

7. Podtcerob A.B. Mesto arabskix stran v systeme mezdunarodnix ontosheniy [Elektroniy resurs]: Institut izutcheniya Bliznego Vostoka /A.B. Podtcerob. – Rezhim dostupa: http://www.iimes.ru/rus/stat/2009/09-04-09a.htm. – Nazvaniye c ekrana.

8. Truevtsev K. Кщярвутшу ш smert panarabisma / K. Truevtsev //Politicheskiy zhurnal. – 2004. – №28 (31). – C.36-38.

URL: http://www.sworld.com.ua/e-journal/J21318.pdf
Downloaded from SWorld. Terms of Use http://www.sworld.com.ua/index.php/ru/e-journal/about-journal/terms-of-use

9. Fartushnyak S.Y. Politica SSHA v otnoshenii integratsionnih protsessov v Arabskom mire (1991-2011 gg.): dis. …k. polit. nauk: 23.00.04 /Svetlana Yurievna Fartushnyak. – K.: NBYV, 2012. – 245 c.

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THE CONCEPT OF BUSINESS REPUTATION OF LEGAL ENTITY

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In this report we describe the concept of business reputation based on legislation and research. This concept is characterized in objective and subjective understanding, of the broad and narrow sense. Based on the analysis of various definitions and characteristics, gives own definition of business reputation.

Key words: business reputation , legal entity, non-property benefit.

Business reputation is considered in the literature in different versions: with objects of exclusive rights aimed at individualization of people, goods, works and services within the enterprise as a property complex, as part of capacity, as a social good that is protected by law, as protected legal interest, as a subjective right [1], but we do not agree that this term can be viewed through the prism of all these options, and we are interested only business reputation as a private non-proprietary good that in this list are not included. To define the concept of business reputation, we should examine the legislative provisions scientific position on this issue.

The legislation defines a reputation only in respect of certain business entities. This concept is seen as information about compliance of a natural or legal person, including the heads of the legal entity and owners of significant interest in such entity, the requirements of law, business practices and professional ethics, as well as information about the integrity, professional and managerial skills of an individual [2]. It seems, in fact, the concept of goodwill entities, even if only in business, has a

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much broader meaning.

Thus, business reputation is defined as an entity based on information about the quality of the its goods, works, services, compliance, contractual and other commercial obligations, rules of business ethics rating entity consumers, customers, business partners, government agencies, public organizations and the media, it is based on information produced by the entity products and related activities. In relationships with consumers, buyers are subject to assessment quality, competitive products, in relationships with contractors in the contractual obligations, other members of the economic circulation, along with the quality of products and evaluated compliance entity obligations, rules of business ethics , in relations with public authorities, public organizations, the media is evaluated accordingly observance of economic, competitive, tax and other laws, participate in community events, charitable activities [3]. So business reputation entities involved in business turnover has specific properties, and we need a generalized definition for all entities.

Supreme Court of Ukraine during business reputation (including business) understands assessment of their business, civic, professional or other activity carried on by such person as a member of social relations [4]. That is, the definition of business reputation is partly dependent on the type of activity.

In science business reputation is defined as an established rating person or entity in any field of professional or other socially useful activities, based on available information about its positive and negative social and meaningful actions that is known to others, and therefore reflected in the public mind as the opinion of the person in terms of morality of a society or social group [5] formed opinion about the quality of the team, the organization, company, institution or individual natural person in business traffic, including in the area of entrepreneurship [6]; positive assessment of an individual or a legal entity primarily as conscientious entrepreneur other members of property turnover [7], strong positive evaluation of business (manufacturing, professional) person merits of public opinion [8] composed of personal opinion based on an assessment of its socially relevant qualities, prevailing in a particular social milieu thought of an individual or group of individuals, the

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general consensus about the quality, advantages and disadvantages of someone, something, followed by a positive evaluation of public display of merit persons in the public consciousness, composed in others opinion on morale of a person based on his previous behavior or activity [9] - that is, business reputation associated with the activities of the individual.

The significant in the study of "business reputation" called the question of its consideration of the objective (external) side and the subjective (inner) side: with the objective of business reputation - is good, indicating the importance of the person to society determined in the course of its activities, regardless of its form, in terms of its professional activities, business and moral qualities, qualifications, ability to timely and high-level to perform the work to be a reliable partner to comply with the law, etc.; subjectively - a good that indicates the importance of a person regardless of the type of activity as a representative of professional and business areas of public life on the basis of its own, individual consciousness, priorities and beliefs [10].

Even considering this concept in broad and narrow senses: in the broadest sense it is understood as a positive public assessment of professional officers, officers as subjects concerning legal entities, classes in any generally useful activities, including both those that are involved and those that are not involved in the business (entrepreneurial) turnover, in the narrow sense, it is understood as a positive score merit participants business turnover, commercial entities and non-profit entities that are involved in entrepreneurial activity [11]. This understanding of the term "business reputation" does not promote uniformity of practice of law and does not provide equal protection of the right to reputation all entities and is not quite true narrow understanding of business reputation.

In civilian science researchers goodwill entities called her the following symptoms: lack of material and the material (physical) structure, the possibility of identification (discharge, separation) organization from another property, use in production, the performance of work or services or for administrative needs of the organization , use for a long time, that useful life, the ability of organizations to bring economic benefits (income) in the future, the presence of properly certified

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documents proving the existence of the asset and the exclusive right to organize the results of intellectual activity [12]. By following features can not be recognized reputation, some of them have bedsores its nature.

I.F.Koval argues that its legal nature reputation entities possess such inherent characteristics: intangible, inalienable character. Along with this it affects the financial position of the entity, providing a steady income or, conversely, weakening its economic position; peculiar entity since its inception and throughout the existence, individual character that appears in the reflection identity of each producer and distinguish it from other participants in the economic circulation; dynamic, energetic character, because in the course of a business entity of its business reputation is constantly subject to change in a positive or negative direction [3]. With most signs we agree, although the explanations are not all successful.

Thus, by analyzing the definitions of goodwill contained in legislation and scientific works, including its main features, we can give its own definition of this concept.

Thus, business reputation – is non-proprietary good that characterizes the general opinion of the person that has developed on the basis of the evaluation of its activities. More precise definition of business reputation may give only knowing the scope of activities of a legal entity.

References:

1. Nikulicheva NY The right to legal entities and business reputation and its civil legal protection: Avtoref.dyss. Kand.yur.nauk ...: 12.00.03. / Russian Akademy Sciences Siberian Branch of the Institute of Philosophy and Law. - Novosibirsk, 2004. -. 23p., P.11, 15.

2. On Banks and Banking Activity: Law of Ukraine of 07.12.2000 № 2121-III Supreme Council of Ukraine (BD), 2001, № 5-6, Art.30., Article 2.

3. Koval I.F.The right to reputation entities and its non-judicial protection against unauthorized use: Avtoref.dys. Kand.yur.nauk ...: 12.00.04. / National Academy of Sciences of Ukraine Institute of Economic and Legal Studies. - Donetsk,

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2005. – 23p., P.7.,8

4. The judicial practice in cases protect the dignity and honor of the individual and business reputation of physical and legal persons: the Supreme Court of Ukraine of 27.02.2009, № 1. / Http://zakon2.rada.gov.ua., P.4.

5. Stefanchuk RO Moral rights of individuals in civil law (concept, content, system, and implementation of security features): Monograph / Vidp.red. Ya.M.Shevchenko. - Inc: Vyd.HUUP, 2007. – 626p., P.451.

6. Anisimov AL Honor, dignity, business reputation: civil legal protection. - M.: Lawyer, 1994. – 79p., - P.18.

7. Zynhylevskyy A. Law aspects of protection of honor, dignity and business reputation. / / Nestor Journal. - 1995. - № 12. - P. 22.

8. Bulovych B. Case honor. / / Legislation and Practice of funds massive information. Kazakhstan. - 1997. - Vol. 3. - P. 11.

9. Kostyuk E. Intangible good. Protect the honor and business reputation. - MA: Lex-Book, 2002. - 320., P.315.

10.Jidkova OS Civil legal mechanism for the protection of the inviolability of business reputation: Avtoref.dys. Kand.yur.nauk ...: 12.00.03. / Kharkiv National University of Internal Affairs. - H.: 2008. - 16C., P.5.

11. Dyachenko EM Reputatsiya business entities: Diss. Kand.yur.nauk ...: 12.00.03. / Kuban State universitet. - Krasnodar, 2005. – 218p., P.7.

12.Nikulicheva NY The right to legal entities and business reputation and its civil legal protection: Diss. Kand.yur.nauk ...: 12.00.03. / Russian Akademy Sciences Siberian Branch of the Institute of Philosophy and Law. - Novosibirsk, 2004. – 177p., P.91.

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SOME PROBLEMATIC ASPECTS OF THE NEW LAW OF EDUCATION

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This article deals with the problem of competition of educational institutions specified in the law "On Education in the Russian Federation." In what way competition is applicable in vocational education in the Russian reality.

Keywords: competition of educational institutions, the quality of education, vocational training, educational institutions, government guarantees, the effectiveness of educational establishments.

December 29, 2012, a new law regulating relations in the sphere of education was adopted. This law has long been waited for, it was even proposed to codify the law on education, its different variants have been discussed and sometimes canceled, a number of its provisions were debated that promoted the adoption of a balanced, more appropriate to the needs of society and the state a law in general.

However, after his admission, the legislator seems not to be able to solve a number of problems, and may even exacerbate them, which in the future may adversely affect both the quality of education, and the entire economic policy of the state as a whole.

One of these problems is the competition of educational institutions.

The federal law "On Education in the Russian Federation" [1] (it is a new law) pays much attention to the question, it is seen not only from the substance of the law itself, but from the second article, listing all types of educational institutions, as well as from the principle of the inadmissibility of the restriction of competition in education. At the same time there is a question whether the competition will improve the quality of education.

This question is not accidental. On the one hand, over the past twenty years, various reforms education in Russia is not so much gained as lost: it is the "brain drain", and corruption, and the total underfunding, and mfny oter reasons. As a result of these reforms, we have lost even that which has been achieved in the USSR.

On the other hand an increase in the number of educational institutions, in practice, does not promote the quality of education, but on the contrary.

For example, for the first time, the issue of competition in the field of education, was settled in Article 12 of the law which has been canceled at present the law "On

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Education"[2], providing along with public educational institutions and private ones, where the founders could act individual (physical) and legal persons. Thanks to this the number of higher educational institutions in Russia has increased several times compared to the number of higher education institutions all over the former Soviet Union, at the same time, the quality of education and all science in general, has not improved. Moreover, today we can say that competition among universities was not an expression in the fight for quality of education, and in the fight for student finance and wallets, and the hopes that were pinned on the competition – did not materialize. This is quite natural.

As with the adoption of the law "On Education" in 1992, and when a new law in the basis ofit is a postulate, with an eye on the U.S., Canada and other developed countries, the fact that competition spurs universities offer a quality education in accordance with market requirements. As a result, the budget places are limited to students, as it is considerer that students paying for their education are more interested in a quality education and, therefore, responsible about how to learn, and to the choice of an educational institution.

But neither then nor now the fact is taken into consideration that all of this only works if the economy, industry, etc. is developed. In this case really organizations that provide vocational education are obliged to rely on the relevant market conditions. But even in this case it is necessary to recognize that the market approach to education is not always possible to identify talented young people and to give them the opportunity to receive a quality education, and the U.S. is forced to deal with this problem attracting a large number of scientists and experts from other countries.

It is difficult to speak about competition in the field of education in Russia, where the foundation is raw and the speculative economy, flavored by corrupted component (let’ s remember Magnitsky’s list, duo Serdyukov and Vasilyeva, etc.). In this case lawyers, economists and managers are not always prepared by specialized higher schools and most private universities do not even care about the quality of education. Because in the state, where priority is given speculative commodity economy, where no high-tech production, requiring the development of basic and

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applied sciences, it is important not the quality of education, and a diploma. This is confirmed by the practice.

First, students enter some universities students not because of the quality of education, but because it is cheaper, on the one hand and on the other there are less demands on the part of teachers.

Second, most of the state universities, where budgetary and extrabudgetary places, faced with the fact that students who receive a scholarship, learn better than students paying for their education, especially studying by correspondence. The reason is that the budgetary students can lose scholarships for poor training and the latter realize that in the lack of adequate funding, they are the ones who bear the educational institutions of the "golden eggs."

Third, the higher education institutions that prepare qulified specialists, faced with the fact that their graduates either do not work in their field, or move abroad, where they are needed.

So will help improve the quality of education involvement in professional education, not only in secondary and higher education institutions, and other organizations engaged in, along with the main activity (ie commercial) and educational activities, as an additional activity (paragraph 19, Part 2 Art. 2 of the Act)? Will this lead to the fact that Russian education more will sit on "commercial needle"?

Furthermore, the problem lies in the fact that it fully applies not only to the institutions of higher education, but also to the school. As J. Zolin [3] noted, comprehensive schools perpetuate increasingly social differentiation in recent years, and how the new law will help to reduce this differentiation – the big question. In any case, 2000 2013 years are marked by the growth of school-age children not walking to school. A paragraph 3 of Part 1 of Article 8 of the Federal Law "On Education in the Russian Federation", indicating in detail what the state guarantees are for a public and free education in preschool and school-municipal educational institutions, does not specify who should be a number of costs. That is, by providing means providing textbooks, toys, and labor costs, except for the cost of maintaining the buildings and

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utilities. At the same time, the law does not say who will pay the costs of the buildings and utilities. Again the parents? But it is no secret tha in Russia is one of the most controversial and misunderstood payments also "eating" not a small fraction of the family budget, are just the payments for housing and utilities.

Though the ninth article of the law № 273-FZ (item 2, Part 1, Article 9) obliges municipalities to provide access to free preschool, primary, general, basic general education according to basic education programs in the municipal educational institutions , but again, not it is not explained what exactly support will look like. Either it will be the same textbooks, toys, tools, manuals, etc. or all costs will be here, including the cost of utilities and maintenance of buildings – until it is clear.

Thus, at present we get an impression that the government, taking a pretty controversial law intentionally wants to get rid of the cost of education.

A similar conclusion is connected with paragraph "c", part 2 of Article 29, which refers to the obligation of educational institutions to inform about the employment of graduates in electronic networks. This provision, which gives the right to evaluate the effectiveness of professional educational organizations objectively, would be possibly a positive innovation, but on the condition that the knowledge-intensive, high-tech manufacturing is developing in the state. Otherwise, when the majority of students, as mentioned above, because of ongoing endless and ineffective reforms, cannot find a job in the profile, this provision will result in a regular check of the state educational institutions, and the recognition of them ineffective.

From the above it can be concluded that the newly adopted law "On Education in the Russian Federation» № 273-FZ, is not aimed at the development of education, but it is aimed at the state's withdrawal from this area, the gradual shifting of all the responsibility and the cost of education on the shoulders of its citizens.

This is evidenced not only an analysis of legal rules adopted by the law, but also the fact that on the one hand the authorities are not taking any concrete steps for Russia's transition from a resource economy to a post-industrial society. On the other hand, speaking of competition of educational organizations, government initially puts them on unequal terms. For example, only public higher education institutions were

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effectively checked in the fall of 2012, but the effectiveness of any one particular university has not been tested. It proves once again that the government is interested in reducing the cost of education, and not in increasing the quality and development of innovative technologies, which are so often discussed by government clerks.

References:

1. Federal Law of December 29, № 273-FZ "On Education in the Russian Federation" // "Collection of Laws of the Russian Federation", N 53, 31.12.2012, ar. 7598.2.

2. Act of July 10, 1992 № 3266-1 «On Education" (in red. Federal Law of 12.11.2012 N 185-FZ) // "Russian Newspaper", N 172, 31.07.1992.3.

3. Zolin I. Strategy of labor market regulation in the context of globalization of the world economy // Problems of the theory and practice of management. – 2007. – № 7. – S. 40 – 47.

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CURRENCY REGULATION: FOREIGN EXPERIENCE

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Foreign experience of currency regulation is examined in the article, the mechanisms and consequences of currency restrictions and liberalization of the currency market are analyzed, and conclusions on the applicability of foreign experience aimed at the improvement of regulatory support of the mechanism of currency regulation and currency control in Ukraine were drawn.

Keywords: currency, currency market, currency regulations, currency control, currency restrictions.

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Since Ukraine's integration into the global system is connected with the establishment of the mechanism of interaction between the national economy and the world capital market, the practical implementation of this mechanism is possible only with the active cooperation of domestic financial institutions and corporations with similar foreign entities included in the global market of capitals.

Currency control or currency regulations affect the formation of the world economic conditions, monetary and financial relations, and distribution of financial resources in the world and the prospects for international trade development in general.

A specific feature of the currency regulation is that it provides interaction of domestic monetary and financial processes with the international currency and stock markets. Through a system of currency regulation, the national economy is influenced by the world economy, for which reason it is advisable to seek international and foreign experience in the regulation of currency sphere.

Now there is an active international cooperation in the sphere of currency regulation, both at the global level (for instance, the International Monetary Fund), and at the regional level (the European Monetary Union). Therefore, improvement of the system of state regulation of the monetary sphere is a factor of the active participation of Ukraine in the international economic relations.

Foreign experience in the regulation of currency transactions shows that the development of national currency laws in most countries have been building in the conditions of strengthening the international relations, the creation and development of the international monetary and financial institutions.

With the development of international trade, the role of the global currency markets has been increased. However, their development occurred in waves, with each new wave the role and place of the currency regulation in the world economy, and the dynamics, volume and structure of currency flows between the markets have been changed.

As noted by M.G. Kalney, there are three modes of the national currency regulations, depending on the degree of state intervention:

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-currency monopoly of the state in which the national money unit is not subject to conversion and it is a closed currency;

- existence of system of currency restrictions during certain transactions when the national money unit has a tendency to go beyond the limits of the domestic monetary market and becomes restricted convertibility;

-absence of currency restrictions, when the national money unit goes to the global currency market and becomes freely convertible [1, p. 14].

At present, the presence of currency restrictions is a feature of many developing countries and countries with economies in transition. Thus, the statutory requirement of mandatory sale of the export currency earnings exists in the 75 member countries of the IMF. Among which, 42 countries-exporters are obliged to sell 100% of currency earnings, and the requirement of partial sale of currency earnings in the amount from 80% to 25% is applicable in 33 countries [2, p. 273]. China, Brazil and India are largest representatives in this list.

In China, there is a strict requirement of 100% sale of currency earnings. Only authorized domestic enterprises can leave at their disposal 15% of the foreign trade turnover of the previous year. It should be noted that such strict requirements do not hinder economic development of the country.

In Brazil, the demand of compulsory sale of currency earnings is connected with the high cost of servicing the foreign debt and the need to restore the level of gold and foreign currency reserves.

Indian Government allows to exporters to remain at their disposal not more than 50% of currency earnings and to enroll them in currency accounts at the banks of India. Only enterprises fully export oriented, and manufacturers of electronic components and software are allowed to remain up to 70% of currency earnings [3, p. 7].

Thus, as the foreign experience evidences, currency restrictions may be regarded as reasonable, even the necessary measures in certain economic conditions. The use of currency restrictions and currency controls in countries, which economies are at the stage of market transformation is of particular importance, since the market

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instruments of currency regulation in in these countries are still being formed. In these countries, the economic and political conditions are unstable, that is why the exporters have a desire not to return the currency into the country and leave it abroad, which has a negative impact on the economy in general, in particular, it leads to a deficit of the balance of payments, a sharp increase in demand for the domestic currency in the domestic currency market, reduction of the value of national currency. Therefore, the state should establish such currency restrictions that would prevent the outflow of capital. For example, the law sets the terms of returning to the country the revenue from export transactions, as well as goods (works, services) in imports subject to the advance payment, restrictions of currency values' export by citizens, prohibition of payments in foreign currency on the territory of the country. Thus, currency restrictions in the period of market economy transformation is an objective necessity and applied in order to protect the national economy of the country, the regulation of the balance of payments [4, p. 50].

At present, the majority of industrialized countries have freely functioning currency markets and freely convertible currency. However, to achieve this goal, at their time they pursued a policy of hard currency restrictions in relation to the current currency transactions and transactions involving the movement of capital. The majority of Western European countries applied currency restrictions in one form or another until the 80's. In the USA, the currency restrictions were abolished earlier. Now, the regulation of capital movement in these countries is executed by using the market mechanisms and instruments of monetary policy.

Currency control is the administrative method of ensuring compliance with the rules and regulations of currency relations. The world experience shows that monetary relations and the domestic currency market have been successfully developed with the active participation of the state and the effective monitoring of the authorized bodies over the currency transactions [5, p. 28].

The objective of currency controls is to protect the country's economy from sharp fluctuations of the monetary system and reduce the currency reserves, related to the movement of capital, as well as ensuring the national security.

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It should be noted that even in case of formal abolition of the currency control, as a rule, statistical monitoring over the processes taking place in the movement of capital is carried out, and the mechanisms of currency control are used (Germany, Japan). These mechanisms are used for the implementation of tasks related to the struggle with the "money laundering".

Therefore, the mechanism of currency regulation and control in the industrially developed countries has been historically formed with consideration of the specific conditions of development of each of these countries. It has been actively used by the absolute majority of countries in the critical periods for their economies in order to protect the financial independence, stability of the monetary system, strengthening the rate of the national currency and mobilization of currency reserves.

In accordance with the features of different countries' development at a certain stage of development, the currency controls served as an important element of economic policy, which provide stability and gradualism of the market reforms, preservation of currency resources of the state for a period of difficult transition period.

The position of the international financial institutions towards liberalization of capital flows from 1946 to the present time has a number of major changes. In the first stage until the mid-1970, the currency control was seen as a fully legitimate instrument of macroeconomic policy. The corresponding position was formally fixed by Article VI of the IMF Charter, according to which the countries had complete freedom to enter and use the measures of currency controls, directed at support of the balance of payments and stability of the exchange rate. Moreover, in certain situations, the Fund itself could require the implementation of currency control [6].

Since late 1970's the developed countries have started to take active steps towards the liberalization of capital flows. The Code of liberalization adopted by the Organization for Economic Cooperation and Development in 1961 was an impulse for that. This process was facilitated by such objective factors as:

- review of the objectives and principles for the implementation of monetary policy;

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-growth of negative tendencies associated with the currency control in the real sector of the economy;

- development of the financial system and increased competition in the market of capital;

-reduction of the effectiveness of currency control within the course of expanding the range of financial instruments and the development of integration process, increasing the scales of the "gray" economy;

- achievement of the level of development at which the advantages of liberalization of capital flows were much higher than the risks.

However, the numerous crises of recent years have shown that successful liberalizations needs fulfillment of certain conditions. Accordingly, in recent years more attention has been put to a comprehensive study of the possible negative consequences connected with the process of liberalization.

Experience of many countries make it possible to determine the following conditions for the success of liberalization:

1. Macroeconomic stabilization through a complete transition from the budget to the treasury system and holding tight monetary policy should precede the liberalization of markets. High inflation reduces the information content of prices, which, in its turn, affects the markets, undermining their effectiveness.

2. The gradual reduction of government interference in markets' performance, starting from liberalization of the trade and reformation of the labor market. Deregulation of the financial sector should be done later, since the rate of transformation is much higher than in other markets.

3. Before removing the restrictions on the movement of capital, it is necessary to reform the financial system in order to minimize problems associated with inefficient allocation of resources, which are multiply amplified in a free capital market.

Thus, a prerequisite of successful liberalization is economic stability and completeness of the reforms' process.

It should be noted that the contemporary policies of the International Monetary Fund in respect to the free movement of capital and non-imposing any restrictions on

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the inflow or outflow of foreign capital, has changed significantly. Now the IMF recommends to governments to impede the speculative flows, if it threatens the financial stability of the country. The IMF Board emphasizes that the temporary restrictions may be justified and useful during the economic shocks, and when other means of monetary policy have been exhausted [7].

Recommendations of the IMF are aimed at reducing the inflows of speculative capital and interest rates (especially in the overheating of the economy and the significant pressure on inflation), the strengthening of the national currency and the increase of the international reserves. At the same time, the IMF supports the ban on the use restrictions for the artificial lowering of the currency exchange rate. In respect of the capital outflow, the IMF emphasizes the feasibility of introducing direct restrictions only in the case of acute economic shock, to mitigate the negative effects of the recession. In recent years, these measures are used in Argentina, Iceland and Ukraine.

Thus, the foreign experience in the sphere of currency regulation demonstrates the interdependence of national, regional and international currency systems. The stability of the national currency is influenced not only by the internal economic situation in the country, but the situation in the world financial, including the currency markets. In addition, it is possible to talk about a wide range of tactical approaches to the regulation and control of currency transactions in foreign countries, which Ukraine can benefit from to improve the regulatory support of the mechanism of currency regulation and currency control.

References:

1. Kal’ney M.G. Legal regulation of foreign exchange transactions in the Russian Federation: Abstract from Dissertation for academic degree of the Candidate of Sciences: specialty 12.00.14 "Administrative law, financial law, information law" / Omsk Academy of the Ministry of Internal Affairs. - Omsk, 2002. - 21 page.

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Downloaded from SWorld. Terms of Use http://www.sworld.com.ua/index.php/ru/e-journal/about-journal/terms-of-use

2. Korniyuk O. "Currency" future // Collection of systematic legislation "Currency transactions: law, tax and accounting records" / [I. Sukhomlin., O. Shapoval]. - K.: Blitz-Inform. - 2005. - № 11. - Pages 273-274.

3. Sarkisyants A.G. Liberalization of currency regulation: foreign experience // Finances - 2002. - № 1. - Pages 7-10.

4. Reznikova O.O. System of currency regulation in Ukraine at the present stage: Dissertation for the degree of the Candidate of economic sciences, specialty 08/04/01 "Finance, monetary circulation and credit" / Research and Development Financial Institute at the Ministry of Finance of Ukraine. - K., 2001. – page 26.

5. Blaschuk Y.A. Currency control: international experience and national tendencies // Bulletin of the National Bank of Ukraine. - 2001. - № 4. - Pages 28-30.

6. Sarkisyants A.G. The liberalization of capital flows and currency control: foreign experience and Russia [electronic resource]. - Mode of access: http://www.bankmib.ru.

7. Yedovina T. Currency control was returned to the list of drugs / Kommersant newspaper. - 2012. - 05.12. - № 230 [electronic resource]. - Mode of access: http://www.kommersant.ru/doc/2083037.

J21318-007

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INDEPENDENCE OF THE JUDGES AS ESSENTIAL PART OF INDEPENDENCE OF THE JUDICIAL POWER

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Analyzing the present-day state of the institution of independence of the judiciary and by-law nature of judges' activities, it is necessary to note, that there is no unity in opinions on the notion of independence of the judiciary. Taking into account different opinions on the question, we came to the conclusion, that independence of the judiciary is formed by the influence both of objective (promoting

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its manifestation) and subjective (subject's volitional orientation) factors, which operating jointly should provide:

- obedience of the judiciary to the Constitution of the RF, laws and other legal normative acts;
- exclusion any illegal influence on judges from state government bodies, local self-government, public associations, officials or citizens;
- freedom of inner beliefs of judges at the time of consideration of a case (not to be influenced by the opinions of parties at the trial; at the criminal case hearings not to be influenced by the conclusion of pretrial investigation; inadmissibility of predetermined directions from higher level judicial instances voiding written pleadings of lower courts and remitting a case for further inquiry).

Independence of the judiciary is ensured by increased legal requirements both to candidates for judgeship and to acting judges (list of requirements to candidates for judgeship is constantly increasing); a particular background screening procedure of a candidate at his/her appointment (election) to judgeship; a possibility to make him/her criminally, administratively, disciplinarily responsible for committed offences; operation of judicial community as means of self-regulation of the judiciary.

We'd like to note that judges of all ranks must get their authorities from two other branches of power- legislative and executive; after being formed the judiciary should exercise control over these branches, staying independent. Only by this way impartiality and objectivity of the judiciary can be reached.

One more point should be mentioned –abolition of judge's accountability to persons (bodies), who appointed (elected) them. Such accountability was usual at the Soviet period. It was even emphasized by the legislation that judges were accountable to bodies that had appointed them and they even could be removed by them from office.

Being one of the preconditions for establishment of the truth, independence of the judiciary provides the best conditions for overall objectiveness in the investigation of actual circumstances of every case. Independence of the judiciary is

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the most important guarantee for achieving goals and missions of the judiciary by examination and settlement of cases during trials, issuing legal and well-grounded ruling. Independence of the judiciary, like justice as a whole, provides protection of civil rights and freedoms, defense of state and public interests. It also promotes for upbringing law-abiding citizens and it is the most powerful guarantee of legality of the judiciary activities.

Independence of every judge is the essential part of independence of the judicial power. Independence of the judiciary is the constitutional principal of the judicial system activities. The importance of this principal based on independence of the judicial branch " in order to be standard, accurate scales, mechanism of checks and balances in the consideration of different legal matters for ensuring social stability" [1, p.86].

Under such conditions the acceptance of independence of the judiciary seems to be obvious, but in practice this branch of power faces with refusal to be accepted equally among the most important.

In Russian legislation the principle and the notion of independence of the judiciary is not clearly exposed either in the Constitution or in legislation on judicial power. The same problem we have with independence of judicial power bodies. Nevertheless, the principle of independence of the judiciary is certainly the starting one, defining the position of the judiciary in a modern state. Moreover, legislators didn't give a certain position for that principle in the system of judiciary activities principles.

The law of RSFSR "On Judicial System of RSFSR" defined the position of the principle of independence of the judges and stated their submission only to the rule of law (Art.12) in the system of general provisions (Ch.1 "General Provisions").

But this law became void on 1st Jan., 2013 owing to adoption of the Federal constitutional law of the RF "On courts of general jurisdiction in the Russian Federation" and in our opinion, this normative act excluded the given principle from its provisions without any grounds, although other laws of the RF contain it. Thus, in

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the Federal constitutional law “On Constitutional Court of the Russian Federation” [2].

Art.29 “Independence” is in chapter IV “Principles of Constitutional Court Procedure”, but Art.13 “Guarantees of Independence of the Judges of Constitutional Court of the Russian Federation” is included into chapter II “On Constitutional Court Judges’ Status in the RF”. In the Federal Constitutional law “ On Judicial System of the Russian Federation” Art.5 “Independence of the Judiciary and judges” is included into chapter 1 “General Provisions”, but not into chapter 2 “Basis of Judge’s Status”. The Federal constitutional law “On Arbitral Courts in the Russian Federation” [3].

Art.6, ch.1 “General provisions” also defines independence of the judiciary as one of the most important principles of arbitral courts activities in the Russian Federation. The Federal constitutional law “On Military Courts in the Russian Federation” [4]. Art.5 “Independence of Military Courts and Judges” (ch.1 “General Provisions”) supplements the provision on independence of the military judiciary by the principle of judges’ unaccountability of their activities while administrating justice. At the same time ch.3 “Status of Military Courts Judges” set forth in Art.26 that status of Military courts and Military Judicial Assembly judges is defined by the Constitution of the Russian Federation, FCL of the RF “On Judicial System in the RF”, by the RF law “On Status of judges in the RF”, by acting Federal constitutional law, federal laws don’t contain any mentions on independence of the judiciary [5, p.50].

We’d like to attract your attention to the transformation of principle of independence of the judiciary in the RF law “On Status of Judges in the RF”.

Since its first timeimplementation, 26.06.1992, №3132-1, this principle was defined as, “Judges are independent in administrating justice, are subject to law and aren’t accountable to anybody” (p.4, art.1,“Judges are Exponents of the Judicial Power”); in 1995 owing to the amendment by the Federal law, 21.06.1995 №91-FL, this norm was changed and since then it is defined and acts as, “Judges are independent and are subject to the Constitution of the Russian Federation and law. In

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their activity in administrating justice they are not accountable to anybody." As it can be seen from the comparison of the texts independence of the judiciary was put outside the limits of administrating justice and legal status of a person vested with judicial authorities has dramatically changed. The principle of independence of the judiciary has spread on all his/her life. Another question is how it affected a real position of a judge as a citizen in society and state.

A candidate first appointed to the post of the judge by the Edict of the President of the RF or by the Council of Federation of the Federal Assembly of the RF can start performing his/her duties only after official oath ceremony.

The aim of the judges' status is to ensure competence, independence, impartiality, and the qualities that every citizen has a right to expect from the judicial system and from every judge who is entitled to defend rights of citizens.The status excludes any possibility of adoption and application of any norm and procedure, which can make unsteady faith in their competence, independence and impartiality. A judge is an exponent of judicial power; he/she is a person representing a high-rank official at the hierarchy of state officials, representing power structure of Russia. He acts personally and directly on behalf of the state realizing his/her duties, so it's essential in every possible way to provide independent performance of assigned duties by a judge. But at the same time judge's rights and duties define his/her specific position as a citizen in the society. Just this specific position is the guarantee in providing those rights and duties, which a judge performs, administrating justice and his/her authority. We suppose that the principle of independence of the judiciary means such position and state of a citizen vested with judge's authority when nothing can prevent him/her from administrating justice, being guided only by the Constitution of the Russian Federation and law. All this means the necessity of particular behavior in all spheres of life. A judge doesn't have a right to represent any state or public bodies, any political party and movement, other institutions or organizations, any officials and state or territorial entities, any nation or social group [6, p.38].

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Passing a judgment a judge should do it in the conditions, which exclude any influence on his/her will, (s)he must not ask or get any instructions on matters taken by court for preliminary consideration or examination. In this connection measures of social-law or personnel character aimed to independence of the judges as exponents of federal judicial power while administrating justice are objectively necessary for the society [5, p.49].

Since the time of an appointment particular requirements are placed to every judge and (s)he should always keep it in mind. To say it strictly, to ensure independence of anyone isn't possible either by state legal ways or by public measures. In fact it is a feature of self-awareness of a certain person, which can be developed as inner characteristic of personality and it can be cultivated at the earlier stage of formation of a person as a citizen[6, p.24].

So, the meaning of independence of the judiciary its irremovability and immunity consists in ensuring fair justice ruling out any possibility of manipulating the judges. A peculiarity of judges' status, their specific position is forced cost of possibility to have really independent justice.

Literature:

1. Izvarina A.F. Judicial Power in the RF. Rostov-on/D., 2001. - p.86.

2. Federal constitutional law, 21.07.1994, №1-FCL (ed.28.12.2010) "On Constitutional Court of the Russian Federation//Russian Newspaper. №138-139, 23.07.1994.

3. Federal constitutional law, 28.04.1995, №1-FCL (ed.06.12.2011) "On Arbitral Courts in the Russian Federation"//Russian Newspaper. №93, 16.05.1995

4. Federal constitutional law, 23.06.1999 №1-FCL (ed.07.02.2011) "Military Courts in the Russian Federation"(with mod. and amend., came into effect since 01.01.2012)// Russian Newspaper. №120, 29.06.1999

5. Ermoshin G.T. Guarantees of independence of the judges – exponent of state power. Social law aspects.// Russian judge. – 2008. – №5. – p.50

6. Izvarina A.F. Judicial power in the RF: subject, structure, forms. Rostov-on-Don: Phoenix, 2010. – p.38.

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J21318-008

Yarovenko V.V.

TYPICAL MISTAKES OF FORENSIC BALLISTICS

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Nowadays on the territory of the Russian Federation has significantly increased the number of crimes committed with firearms, which is the subject of forensic ballistic evidence. Our expert opinions analysis revealed a number of common mistakes that planners make this production expertise.

These primarily include providing object on a forensic ballistic expertise without description, status, and names of individual signs, questioning the reliability of the expert's study of objects in question. So, during the search, investigators seized object, which, in his view, is outwardly similar to the **pistol** and pointed it at a forensic ballistic examination. Prior expert questions were raised: whether a subject resembling a gun, firearm? Expert inspected and found that the design of the object, its dimensional characteristics, allow to *assume* that details items specific to **stun device**. Following the experimental shots, they concluded that the research subject is the strongest made small calibre *revolver,* applies to firearms, and threaded pipe is suitable for shooting sports and hunting cartridges caliber 5, 6 mm [1].

Raises a number of questions: what is an affinity with a pistol and a revolver? Can I use the name revolver for complex components specific to stun device?

Pistols and revolvers do not have similarities in their designs. Distinguishing feature is the presence of special revolvers have a drum with multiple patronnikov, while for the Chamber formed as a gun barrel. Revolver also does not apply to name a set of details specific to stun device. The latest in forensic science and include improvised shooting pens as well as transformed, adapted chambered 5.6 mm device for emitting sound and light signals.

The content and wording of questions, as are common errors with respect to the exploration of self-defence "Wasp gun", "the Defector", "leader". Most often formulated the following questions: whether the gun for firearms; whether the shots

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from a pistol after the last cleaning; is there a shot without pressing the trigger; the ability to identify the footsteps left by the bullet; of a particular type and sample weapons vystrelena the bullet; what ammo you can use as substitutes, etc. [2].

Errors in the formulation of questions in the appointment of forensic ballistic evidence occur in the absence of the necessary forensic investigators have knowledge of new types of firearms [3, p. 61]. Firearms civil defense weapon has design features from other types of firearms: the lack of trunk shot going through the electrical ignition of the primer, the shell is made of rubber and steel core. therefore, the decision of the expert is not possible due to the design of self defense pistols "Wasp", "Guard", "leader", in particular, whether the shots from this pistol after the last part? as used ammunition (ammo), located entirely within the "cassette" then the powder gases (soot) do not stay on the kamorah cassette [4].

In expert practice, there is no single answer to the question: did the pistol "Leader" to firearms, if so, what mind-example (models). Are diametrically opposed conclusions even in the production expertise of one expert. Examined the pistol. "OSA", the expert has concluded that it is not a firearm [5], but another examination of "OSA" - gun is a firearm[6]. There are opinions that the findings applied only to the second part: "gun, submitted to examination, is a self defense pistol chambered for besstvol′nym traumatic action caliber 10x32T model "Leader", for production of shots is suitable" [7].

A similar situation is observed in the study pistol cartridges of the "OSA", "Guard," "Leader". Some experts conclude that patrons are the ammunition – traumatic cartridges 18h45T [8]. Others - are patrons pistol of the "OSA", "Guard," "Leader " is traumatic, but they do not apply to ammunition? For example, 7 rounds are regular patrons of traumatic action caliber 10h31T gun self defense besstvol′nomu the model of the "Leader" of domestic production/ in the chuck has two shells made of rubber. It is cartridges to the munitions do not apply [9].

The study suggests that the investigators and experts do not know the Federal Act "On weapons", which relates to firearms civil besstvol′noe weapon of self-defense firearms (art. 3) as well as Resolution № 5 of the Plenum of the Supreme

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Court of the Russian Federation of March 12, 2002 "On judicial practice in cases of theft, extortion and trafficking in weapons, ammunition, explosives and explosive devices" that includes all types of munitions cartridges for firearms, regardless of size, industry or home-built manufactured way (p. 4).

Disadvantage in the production of ballistic evidence can be considered an expert cannot give an answer to the question of the suitability of weapons to fire because: first, regular rounds to this kind of weapons, in particular, 18h45mm; and secondly, because of the lack or failure of the equipment. So, the questions: whether the traumatic gun suitable "Leader TT 10*32" caliber 10 mm production shots; vystrelena whether the socket from weapons submitted for examination, the examiner concluded that: a) presented at the study of the gun, most likely, is in running order and, most likely, is suitable for the production of shots. To answer this question in a categorical form can only provide ammunition for pilot shots; b) to answer a question "vystrelena the liner out of the arms of the study, is not possible due to lack of patrons for the production of experimental samples [10].

Another expert concluded that: considering the lack of laboratory equipment to measure the speed of shells, as well as removing the 7.62 mm ammo for gun model 1930/1933, design Tokarev ("TT") with the production in 1990 (which lack the expert will have at its disposal a functional and suitable for shooting cartridges of this sample), install the appropriate ballistic characteristics, it is not possible[11. such practices exist in other regions of the Russian Federation [12].

We believe that with such findings, the investigators must not accept, because without answers production examination was pointless. In determining the suitability of weapons to fire expert is essential to establish the experimental firing of the pistol lienen and delays occurred, and to identify the available experimental bullet, cartridge and compare. Solution to the problem, in our view, quite simple-expression of an expert *spertnoj initiative* on the acquisition of standard cartridges in stores: "Sniper", "Hunter", etc., and reference to the investigator for the cartridges.

In cases of malfunction or lack of equipment this expert facility must be assigned additional expertise, production of which is entrusted to the expert

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institution, where such equipment is available and in good condition. So much so that now in cities at the same time carry out expert activities of expert departments, offices of various departments (the Ministry of Internal Affairs of the LC RF, RF MJ. RUSSIAN FEDERAL DRUG CONTROL SERVICE, etc.), which can conduct forensic ballistic expertise, as well as independent experts.

Literature:

1. Opinion No. 263 dated March 24, 2009 ESC Primorskyy edge Archive of federal service of RUSSIA for control of drug trafficking for the 2009 year.

2. Opinion No. 120/05 of February 20, 2004 Archive Seaside forensic laboratories of RUSSIAN FEDERATION for 2004 year MJ.

3. Baranov U.N., Popova T. V. Forensic training and State standards//Journal of criminalistics/Responsible eds. A.G. Filippov. Vol. 4 (16).- M.: Spark, 2005.

4. Opinion No. 14 of April 14, 2005 Archive 99 forensic science laboratory in the PACIFIC FLEET of the RF MINISTRY for 2005 year.

5. Opinion No. 2379 of 13.09.2005, the archives CENTER of the Tyumen region for 2005 year.

6. Opinion No. 2156 from April 22, 2008, the ATC CENTER archive of Tyumen region for 2008 year.

7. The opinion of the expert from 05.06.2008, the Archives Department of the CENTER with the dislocation in ATS by Nadezdenskomu, St. Michael's and MR Hasanskomu edge for 2008 year.

8. Opinion No. 1176/1177 dated December 17, 2003 Archive CENTER ATC Seaside edge of 2003 year; expert opinion No. 222 dated September 19, 2008 Archive CENTER ATC Seaside edge for 2008 year.

9. Opinion No. 1591 of October 12, 2005 Archive CENTER ATC Seaside edge for 2005 year. Opinion of the expert from 05.06.2008, the Archives Department of the CENTER with the dislocation in ATS by Nadeždenskomu, St. Michael's and MR Hasanskomu edge for 2008 year.

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10. Opinion No. 537 of June 8, 2009 years archive ATC Seaside edge of the dislocation Artem in the year 2009.

11. Opinion No. 980/19 April 17, 2009 Archive of Marine forensic laboratories of RUSSIAN FEDERATION for the year 2009 MJ.

12. Opinion No. 2156 from April 22, 2008, the ATC CENTER archive of Tyumen region for 2008 year.

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KING FRIEDRIC WILHELM III AND THE ELECTIVE RIGHTS OF THE PRUSSIAN CITIZENS IN THE EARLY XIX CENTURY.

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In 1807 the Prussian king Friedric Wilhelm III, in order to boost the consolidation of the country after the devastating French invasion and humiliating peace treaty, promised to establish representative bodies which could be formed by all the citizens. The king was forced to promise so under the pressure of the situation but he broke his word as soon as an opportunity came because he feared lest the representative bodies limited his power. The investigation is carried out within performing research work on FTsP realization «Scientific and academic and teaching staff of innovative Russia» for 2009-2013, the state contract from 09.06.2010 № P1291.

Key words: electoral right, Prussia, king Friedric Wilhelm III, representative organ, the Constitution

The liberal ideas set forth by the Great French Revolution were in no way accepted in absolute monarchical Prussia for many years unlike in some other German states. But as time passed more and more citizens demanded a constitution and people’s representative bodies formed by elections[2, 7, 8, 9].

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In 1807 the Prussian king Friedric Wilhelm III, in order to boost the consolidation of the country after the devastating French invasion and humiliating peace treaty, promised to establish representative bodies which could be formed by all the citizens. The king was forced to promise so under the pressure of the situation but he broke his word as soon as an opportunity came because he feared lest the representative bodies limited his power.

On the eve of the battle of Waterloo the Prussian king in his address to the people said again about his intention to grant a constitution, liberty and voting rights to decide on the German affairs. Later he again refused to fulfill his promise, and in order to calm the public opinion he started to appoint commissions for discussing the reforms. As B. Burdes remarked to the point, “generous with extravagant promises at hard times the German authorities called on the people to fight against Napoleon but they were hard to keep the word and often took away with one hand what they gave with the other” [10, p. 6].

Friedric-Wilhelm III in his decree of 22 May 1815 again declared about his intention to form representative bodies on the basis of universal suffrage though he added that he would do it “in due time”. This promise was made against a background of a ban on liberal books and newspapers and persecution of liberal-minded individuals. It was a kind of gratitude to the Prussians who bravely fought against Napoleon for freedom of Prussia.

The election of All-Prussian people’s representation should have been a conclusion to all the Prussian reforms which had been implemented by L. Stein and W. Humboldt [4, p. 290].

Less than three years later, on 21 March 1818, the Prussian king in a new decree duplicated his promise but no date was again appointed.

In October 1819 Baron von Hardenberg submitted to the commission a project “On the class constitution of Prussia” in which he proposed that deputies of the All-Prussian landtag should be elected by the provincial assemblies. W. Humboldt in a memorandum “On the class constitution of Prussia” insisted on direct elections. But

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the commission made an utterly conservative decision that Prussia did not need people's representation at all.

The royal act of 1820 ordered the government to lend or borrow or impose new taxes only with the prior consent of the people's representatives. Constitutional commissions were again formed. The commissions on working out a project of the people's representation finished their work in 1823. According to the project by the 5th commission in which the chairman was the Crown Prince (opposed to any extensive reforms and to people's representation in particular), the King promulgated a law "On organization of the provincial class representation" on 5 June 1823 and a law "On organization of the representative bodies in some provinces" on 1 July 1823.

The class representative bodies were to be formed by regular elections taking place every two years. The provincial class representatives had the right for consultative votes in local and partly national legislation, also they could address the provincial requests to the King on behalf of the province (the landtags could only express their wishes but not issue decrees).

If one tries to characterize these newly formed bodies (the landtags or "land assemblies") one has to note that they were "quite different from constitutional bodies" [11, p. 20].

According to the suffrage of the Prussian provincial towns of 5 June 1823 and 2 June 1824 in the town of Solingen only 511 of its 7934 citizens had the voting right (6.4 percent), in Dusseldorf only 246 of 31 596 (0.7 percent). Nevertheless even this limited suffrage was rather progressive in that time. Owing to it, less than 50 years later almost universal suffrage was temporarily enacted in Germany.

On 5 June 1825 the Friedric Wilhelm III's government implemented a law "On the regional class assemblies" that were to be gradually introduced in several provinces.

We can get a general notion of these assemblies by analyzing, for instance, the provincial landtag of Brandenburg. A. Bebel points out that "the noble landowners and 4 representatives of the ancestral nobility had 35 votes, the towns had 23 votes while the peasantry had only 12 votes. Besides, the peasant and town representatives

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were not elected by all the peasantry and town citizens but by certain groups of voters" [6, p. 13]. O. Buch points out that some 2000 noble estate owners elected a half of the landtag deputies while the other half were elected by 1 335 000 citizens [3, p. 113].

It was established that the ratio of class representation should be 3:2:1 but the actual ratio was different. The noblemen elected slightly more than a half of the deputies, the townspeople – about 1/3 and the peasantry – no more than a quarter.

The age qualification to elect was set at 25 and the age qualification to be elected was set at 30. It was only the nobility who had the right of direct voting. The citizens aged above 25 constituted 20-23 percent of all the Prussia's population [5, p. 31].

The representative assemblies which appeared in Prussia after 1808 can be characterized as "dragging out a miserable existence and powerless" [1, p. 223]. Most people believed that the representative assemblies were not enough so the King failed to fulfill his promise about All-Prussian people's representation, nevertheless the political organizations made no complaints [12, p. XXII]. And "the people refrained from violence waiting patiently for the King to die; they were grateful to him for the reforms which he had implemented in the early days of his reign" [13, p. 6].

References:

1. Bleiber H. Staat und bürgerliche Umwälzung in Deutschland: zum Charakter besonders des preußischen Staates der ersten Hälfte des 19. Jahrhunderts// Universalhistorische Aspekte und Dimensionen des Jakobinismus. Berlin, 1976. - 353 p.

2. Bokov J.A. Analysis of the class elections of the bodies of state power in Prussia and Ancient Rome// Sbornik nauchnyh trudov po materialam mezhdunarodnoj nauchno-prakticheskoj konferencii «Sovremennye napravlenija teoreticheskih i prikladnyh issledovanij, 2010». Tom 14. Juridicheskie i politicheskie nauki. – Odessa: Chernomor'e, 2010. – P. 3-6.

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Downloaded from SWorld. Terms of Use http://www.sworld.com.ua/index.php/ru/e-journal/about-journal/terms-of-use

3. Handbuch der preußischen Geschichte/Historische Kommission zu Berlin: In 3 Bdn. – Berlin; New York, 1992. – Bd. 1. Das 19. Jahrhundert und große Themen der Geschichte Preußens. – 868 P.

4. Huber E. Deutsche Verfassungsgeschichte seit 1789: In 6 Bdn. – Stuttgart; Berlin; Köln, 1961 – 1978. Bd. 1. - Bd. 1. Reform und Rastauration: 1789 bis 1830. – 1961. - XXVII, 820 P.

5. Rohe K. Wahlen und Wählertraditionen in Deutschland: Kulturelle Grundlagen deutscher Parteien und Parteiensysteme im 19. und 20. Jahrhundert. Frankfurt-am-Main, 1992– 307, 1 P.

6. Bebel' A. Socializm i vseobshhee izbiratel'noe pravo. Spb., 1905. - 128 p.

7. Bokov Ju.A. Izbiratel'nye prava grazhdan germanskih gosudarstv v pervoj polovine XIX veka// Vestnik Volgogradskogo gosudarstvennogo universiteta. Serija 9. Issledovanija molodyh uchjonyh. Nauchno-teoreticheskij zhurnal. Vypusk 5. 2006. - P. 52-59.

8. Bokov Ju.A. Stanovlenie aktivnogo izbiratel'nogo prava grazhdan germanskih gosudarstv v pervoj polovine XIX veka// Vestnik Volgogradskogo gosudarstvennogo universiteta. 2003-2004 god. Serija 5 «Jurisprudencija». Vypusk 6. – P. 90– 94.

9. Bokov Ju.A. Formirovanie izbiratel'nyh prav germanskih grazhdan (1815-1918 gg.): Diss. … kand. jurid. nauk. - Volgograd: VolGU, 2003. - 219 p.

10. Burdes B. Politicheskij stroj i partii sovremennoj Germanii. Spb., 1906. - 32 p.

11. Percev V. Germanija i Avstrija. Istoricheskij ocherk. Moskva, 1917. - 93 p.

12. Prusskaja konstitucija s ob#jasnenijami, izvlechjonnymi preimushhestvenno iz kommentarija doktora Arndta/ Per. A. Mejendorf. Spb., 1905. – XXVI, 83 p.

13. Saturn D. Germanskij imperator i narod. Rostov - na - Donu, 1906. – 20 s.

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J21318-010

UDC 343.98

Borovkov A.V.

VALUE OF ETHICAL STANDARDS AT INVESTIGATION OF "TAX CRIMES"

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In the report the main problems of moral and legal character arising in the course of investigation of tax crimes are considered. On the basis of the analysis of data of practice of judicial proceedings of similar category of criminal cases the main recommendations about improvement of the law-enforcement mechanism are provided in similar cases.

Keywords: value, tax crimes, code of professional and moral behavior, preliminary investigation, system of the principles, legal principles, ethical standards.

In modern scientific literature to investigation problems of "tax crimes" it is fairly paid much attention. Researchers consider generally legal sides of this process [1]. However, the tendency of strong influence not legal, in particular, ethical standards, on the fundamental legal principles regulating process of investigation of this type of crimes recently amplifies. Law-enforcement practice and the analysis carried out by the author allow to allocate the following main subject domains of such influence: subjects which are directly related to process of investigation of "tax crimes"; the rules of law regulating responsibility for evasion of taxes and/or collecting.

In recent years in the Russian legal framework there was a set of legal acts which fix moral requirements for the contents to certain representatives of subjects of law-enforcement system of our country, directly related to investigation of crimes as a whole and "tax crimes", in particular. First of all, it is codes of professional ethics [2] which establish moral criteria of compliance (or discrepancies) to a post. Undoubtedly positive aspect of adoption of these codes as certain moral reference

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points generates many the incidents not resolved still having already legal consequences. For example, the status of codes as normative legal acts is disputable. After all they are accepted by authorized bodies as bylaws, but comprises norms of obligatory application which are absent in the profile law. Thus, broad interpretation and especially bylaw application, and in certain cases having also advisory nature, causes vigilance in legitimacy of the similar legislative decision. Thus it should be noted that the fact of recognition at the state level of existence of criteria of moral character to subjects of investigation of a crime is an undoubted step forward to a humanization of all criminal legal proceedings.

Imperfection of a design of dispositions and sanctions (as a whole and in parts) the standards of the criminal act of the Russian Federation providing criminal liability for evasion of taxes and/or collecting from the organizations, long ago I became a subject of criticism of scientific community [3]. Despite it it isn't accepted the legislator of any cardinal measures for elimination of gaps. Certain authors [4] believe that is necessary by hearing of cases about abuse of the right in the field of tax planning and failure to pay taxes and/or collecting to consider a ban which are formulated not only legal, but also ethical standards. This statement on condition of observance of procedure of formal fixing of similar norms in the status of rules of law at the level of the federal legislation is submitted undoubtedly true. At the same time it is possible to understand fluctuations of the legislator. Because in Russia to give to separate norms of morals legal status and to make them obligatory for all multinational and multicultural population of the big country extremely difficult.

It is necessary to consider and influence of the standard norms of morals and moral on the specific member of the modern Russian society, being expressed in legal nihilism, a moral and psychological condition of the taxpayers, being characterized negative attitude to existing system of the taxation [5]. Changes and additions to the norms regulating responsibility for "tax crimes", aren't perceived by society positively. Ascertaining of instability of the state approach to a tax policy stimulates people not to execute existing rules in hope on fast cancellations of the last or their cardinal change. This non-execution, unfortunately, already becomes a

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standard of behavior approved by considerable part of citizens of modern Russia. Law non-execution, failure to pay a tax gradually loses the shape of "the immoral behavior blamed by society". Moreover, the negative tendency of strengthening of positions of moral provisions that moral maybe that act which corresponds to rules of law only in a form gains strength. Thus discrepancy of an essence of the rule of law admits not only lawful, but also moral, approved as an example of behavior and for others similar cases. For example, level of public danger in p.1 Art. 199 of the Criminal Code of the Russian Federation of evasion of taxes from the organizations is lowered to the sum of admissible (criminally nonpunishable) failure to pay of two million rubles for the period within three financial years in a row. In the Tax code of the Russian Federation the following types of responsibility for offenses in the form of evasion from payment of taxes on the organizations are established, for example:

- Art. 119 – for failure to provide the taxpayer in the term of the tax declaration established by the legislation – a penalty of 5 percent of the unpaid sum of a tax;

- Art. 119.2 – for granting in tax authority the operating companion responsible for conducting tax accounting, calculation of financial result of the investment association containing false information – a penalty of forty thousand rubles;

- Art. 122 – failure to pay or incomplete failure to pay the sums of a tax (collecting) as a result of understating of tax base, other wrong calculation of a tax (collecting) or others illegal actions – a penalty of 20 percent from the unpaid sum of a tax.

Thus, responsibility for failures to pay taxes repeatedly below the sums of an unpaid tax. To evade from taxes becomes, unfortunately, not only favourably, but also it is approved from considerable part of society. Such evasion any more isn't considered absolutely immoral act.

It is thought that so shouldn't be, and the considered forms of penetration of ethical standards in structure of the fundamental legal principles regulating investigation "tax crimes", play huge value in the course of investigation so-called "tax crimes" and represent only the beginning of active functional development of all system of legal principles in the field. Such tendency of strengthening of influence of

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ethical standards on activity of the lawyer dictates an urgent need of further and in-depth study of this topical issue for further improvement of moral and ethical models of behavior of taxpayers of modern Russian society.

References:

1 . Borovkov A.V. Topical issues of interaction of science and practice in fight against evasion of taxes and/or insurance premiums in the state off-budget funds from the organizations//Modern high technologies. 2005 . No. 1.S. 48-49; Borovkov A.V. Ways of possible improvement of the legislation on criminal liability for evasion of taxes and/or collecting from the organizations//Taxes. 2006 . No. 3.S. 133-134; Borovkov A.V. Ways of evasion of taxes and/or collecting: the theory and practice//Business in the law. 2009 . No. 3. Page 133-134.

2 . The order of the Prosecutor General's Office of the Russian Federation of 17.03.2010 No. 114 "About the statement and introduction in action of the Code of ethics of the public prosecutor's worker of the Russian Federation and the Concept of educational work in system of prosecutor's office of the Russian Federation"//Legality. 2010 . No. 6; The Order of the Ministry of Internal Affairs of the Russian Federation of 24.12.2008 No. 1138 "About the adoption of the Code of professional ethics of the employee of law-enforcement bodies of the Russian Federation" [an electronic resource]. The document wasn't published. Access from Union of Right Forces of "Konsultant Plus"; The Order FSSP Russian Federation of 12.04.2011 N 124 "About the adoption of the Code of ethics and office behavior of the federal civil civil servant of Federal Bailiff Service"//the Federal Bailiff Service Bulletin, N 5, 2011; Code of ethics and office behavior of federal civil servants of Investigative committee of the Russian Federation (11.04.2011)//the Document wasn't published by the Investigative Committee of the Russian Federation. Union of Right Forces of "Konsultant Plus"; The Code of professional ethics of the lawyer (it is accepted by the All-Russian congress of lawyers 31.01.2003) (an edition of 05.04.2007)//the Messenger of Federal chamber of lawyers of the Russian Federation, N 3, 2010; Code of judicial ethics (12.12.2012)//the Document wasn't published by

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the VIII All-Russian congress of judges. The text of the document is given according to the publication in a site http://www.ssrf.ru as of 27.12.2012.

3 . Borovkov A.V. Improvement of the legislation of the Russian Federation in the sphere of investigation of tax crimes as a way of increase of the budgetary filling in the conditions of macroeconomic instability//the Messenger of the Volgograd state university. Series 5: Law. 2010 . No. 1. Page 107-111; Borovkov A.V. Place and role of tax judicial examination in the course of investigation of the crimes provided by Art. 199 of the criminal code of Russian Federation//the Messenger of the Volgograd state university. Series 5: Law. No. 2(17). 2012 . Page 197-201; Borovkov A.V. Preyudition in investigation of tax crimes//the Messenger of the Volgograd state university. Series 5: Law. 2011 . T.1. No. 5-14. Page 222-224.

4 . Dyomin A.V. Principles of the tax right and practical law//Arbitration and civil process. 2012 . No. 1. Page 2-5.

5 . Kochkarov A.A. Reasons and conditions of tax offenses//Financial right. 2011 . No. 6. Page 27-32.

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Chunikchina T.N.

FEEDBACK CHAPTER OF THE SUBJECT OF THE RUSSIAN FEDERATION AS A MEASURE OF CONSTITUTIONAL AND LEGAL LIABILITY

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In this report considers the procedure of realization of the right of citizens of the Russian Federation on the withdrawal of the higher official of the subject of the Russian Federation on the example of the law of the Krasnodar region.

Key words: «the higher official of the subject of the Russian Federation», «the region of the Russian Federation», «Governor», «feedback», «referendum», «election Commission».

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The Federal form of the state structure of Russia is in the process of development, is the improvement of the legislation with the purpose of creation of the effective mechanism of the entire system of Executive power. Of decisive importance for the stable and effective management in the constituent entities of the Russian Federation is the legal regulation of the status of the Supreme official of the subject of Federation. The improper implementation of their official powers represents a significant threat to the realization of state power of the subject of the Russian Federation, to respect the rights and freedoms of citizens. Therefore, at the Federal level are developed effective mechanisms of constitutional legal responsibility of the higher officials of the subjects of the Federation.

One of the forms of direct democracy, as well as one of the means of control of the citizens of the state for the implementation of the higher official of the subject of the Russian Federation of its powers enshrined legislation, is the Institute of recall of the head of the subject of the Federation constituents.

The introduction of the institution of recall of the head of the subject of Federation of the voters was dictated by the Federal law of May 2, 2012 no. 40-FZ, which obliged the regional legislator to provide for the possibility of early termination of powers of the Supreme official of the subject of the Russian Federation as a result of its withdrawal of voters [1]. To ensure that new standards have earned, subjects of the Federation until December 31, 2012 were to adopt their own laws, providing for the right of revocation of the governors of the voters.

In the Krasnodar region with the initiative of the adoption of the law was opposed by the Election Commission of the region. 30 January 2013 Legislative Assembly of Krasnodar region has adopted a law «On the procedure of recall of the head of administration (Governor) of Krasnodar region» [2].

The grounds for the recall of the Governor of the legislator calls violation of the head of administration of the Krasnodar territory of the Federal or regional legislation, the fact of the Krasnodar regional court; and repeated rude without a good reason for failure to perform their duties, set well as the Krasnodar regional court.

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Contact the Krasnodar regional court with a request to establish the facts give grounds for revocation of the Governor, has the right to political parties, their regional offices, other public associations, as well as a group of citizens of the Russian Federation in the quantity of not less than 100 people, living on the territory of Krasnodar region and possessing the active electoral right on the elections of the head of administration (Governor) of Krasnodar region.

Procedure for withdrawal is made at the initiative of the citizens residing on the territory of Krasnodar region, and possessing the active electoral right, in the manner prescribed for a regional referendum. The initiative group must include at least 20 people.

The authorized representative of the initiative group not later than three months after the holding of the meeting appealed to the Election Commission of the region with the application for registration thereof, in which should be specified grounds for revocation, confirmed by the corresponding decision of the Krasnodar regional court.

Decision of the Election Commission of the Krasnodar region on registration or on refusal in registration of the initiative group shall be sent not less than one regional state print media for publication. Such titles include «Free Kuban», «Krasnodarskie Izvestiya», «Kuban today» and «Kubanskie Novosti». The necessary number of signatures of the voters shall be not less than 25% of the total number of voters registered on the territory of the region. That is, every fourth adult able-bodied inhabitant of Krasnodar region should put his signature only to a vote appointed. It is almost 970 thousand people [3].

The collection of signatures shall be effected within 30 days from the day following the day of registration of application of the initiative group. The election Commission of Krasnodar region within 15 days from the day of the receipt of signature sheets checks the procedure for collecting signatures, the authenticity of information about voters. Verification shall be 20% of the signatures of the number required for registration of the initiative of the vote. If the number of valid signatures of voters is not enough for the appointment of voting for recall or if

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the number of false and invalid signatures made 10 and more percent, the election Commission of the region indicates this in its decision.

The grounds for refusal of the Election Commission in the conduct of voting on recall are: the absence of a full package of documents; the presence of the signatures of more than 10%, collected in the places, where in accordance with the legislation of the collection of signatures is prohibited; an insufficient number of valid signatures or the identification of 10 and more percent of the invalid and (or) of invalid signatures; not to create the initiative group of the Fund of voting on recall; financial activity of the initiative group (the use of other funds, in addition to the funds of the Fund, or the exceeding of the limit of funds); established by the decision of the court of the fact of non-compliance with the initiative group of the restrictions stipulated by the Federal law «On basic guarantees of electoral rights and the right to participation in a referendum of citizens of the Russian Federation»; repeated use of a member of the initiative group of the advantages of their official or service position.

After the adoption of the decision on the refusal in the conduct of voting procedures for the implementation of the initiative of holding of voting for recall shall be terminated. If the number of valid signatures enough and did not reveal any violations, the Commission indicates that in its decision, within 15 days submit all necessary documents to the Legislative Assembly of the Krasnodar region.

The deputies shall take a decision on the appointment of voting for recall or the refusal to carry out such a vote within 15 days. Moreover, in the regional Parliament imposes an obligation not later than 5 days from the day of receipt of the documents from the election Commission edge notify the President of Russia. The legislature should check all documents, to assess whether the complaint to the Governor of the requirements of the law on the withdrawal, the accuracy of whether performed all the procedures.

The vote on recall of the Governor shall be held within 60 days from the date of the adoption of the Legislative Assembly of the Krasnodar region of the decision on the appointment of voting for recall. Decision on the appointment of voting for recall

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shall be officially published in mass media not later than 5 days from the day of its adoption.

It should be noted that for отзываемого face the legislator establishes a number of guarantees that would allow him to protect their rights. He is to have the opportunity to give explanations on the circumstances, put forward as the grounds for revocation, and also at all stages of the implementation of the revocation of them can be used the right to protection of honor and dignity and civil rights and freedoms in court. The Governor is entitled to appoint up to 50 of their representatives, however, the law does not specify the amount of their powers. The initiative of holding of voting on recall may be submitted not earlier than upon expiry of one year from the day of entry in the position of the head of the subject of the Federation.

Feedback is recognized as valid, if for it has voted more than half of the total number of the voters included in the lists of participants of voting on recall. That is, in the Krasnodar region in opinion of the Governor should vote more than 1 million 930 thousand people. According to the information placed on the site of the Election Commission of Krasnodar region, at the last elections of deputies of the Legislative Assembly of the Krasnodar voting in the Kuban region took part 44,73% of electors of the total number of voters included in the list.

The election Commission of Krasnodar region recognizes the voting on the recall is not valid if attended by not more than half of the voting, or if it is supported by half or less than half of the number of participants of voting on recall, included in the lists of participants of voting on recall.

The election Commission of the region recognize the results of voting on recall of invalid: if committed during the conduct of voting or determination of voting violations do not allow us to reliably determine the result; if they are recognized as invalid on the part of the plots of voting in accordance with the rules established by the legislation of the territory; or by a court decision.

If the results of voting the Governor of the Krasnodar region has not been revoked, then his second tip on the same grounds, is not carried out within two years from the day of official publication of the results of voting on recall.

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The implementation procedure of the withdrawal of the voters of the Supreme official of the subject of Federation is quite tough and, probably, the results of voting only in rare cases will enable the voters of this initiative. Neither theoretically nor practically collect 25% of voters' signatures to initiate the revocation procedure, especially in the 30-day period, it is impossible. Comparing the requirements of the legislation, we should note that in order to support the assignment of the referendum in the Krasnodar territory is only required, in accordance with article 9 of the Law «On referendums of Krasnodar region», 2% of the number of referendum participants, registered in the region [4]. One more nuance: for the tip should vote more than 50% of the total number of the voters, not those who came to vote.

Opinion of the Governor – this is, in fact, regional referendum. But Federal and the regional legislation prohibits the imposition of the referendum questions on the preschedule termination of powers of authorities and officials. In order to circumvent the ban, the authors of the law is called the proposed them the «voting on recall», though all the rest of the law is practically identical to those that apply when you start the referendum [5].

Undoubtedly, the Executive authorities at every level should be controlled, including the population. However, the mechanism of control by citizens of their representatives must be implemented, and not declarative.

References:

1. On introducing amendments to the Federal law «On General principles of organization of legislative (representative) and Executive bodies of state power of the subjects of the Russian Federation» and the Federal law «On basic guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation», Federal law of the Russian Federation of May 2, 2012. N 40-FZ // the Russian newspaper. – 2012. – May 4, 2012. – №5772.

2. On the procedure of recall of the head of administration (Governor) of Krasnodar region: Krasnodar Kray Law of February 11, 2013. N 2650-KZ

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// The official site of the administration of Krasnodar region http://admkrai.krasnodar.ru.

3. Information on the number of voters, referendum participants, registered on the territory of Krasnodar region as of January 1, 2011 // http://ikkk.ru/.

4. On referendums in the Krasnodar territory: the Law of Krasnodar territory from July 23, 2003. №606-KZ // Kubanskie Novosti. – 2003. – 9 August. - №132-133.

5. Boris Vishnevsky. How not to recall the Governor // http://www.novaygazeta.ru/politics/54837.html.

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Bokov J.A.

THE VOTING RIGHTS OF PRUSSIAN CITIZENS (1815 - 1849) [5]

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Because of considerable faults in limited class suffrage in Prussia the people were not very active in elections. Under the three-class suffrage it were the third-class voters who above all ignored elections because they saw that they could not affect the situation. The limited suffrage met the interests mostly of the wealthiest citizens thus the wishes of the far greater part of the population – the poorer citizens – were considerably ignored. The investigation is carried out within performing research work on FTsP realization «Scientific and academic and teaching staff of innovative Russia» for 2009-2013, the state contract from 09.06.2010 № P1291.

Key words: electoral right, Prussia, representative organ, the Constitution

Right after the collapse of the Holy Roman Empire the suffrage development process activated and separate German states got granting their citizens the rights to elect local representative government bodies[2, p. 3; 3, p. 99; 4, p. 52].

Due to the Union Act of 8 June 1815 that stipulated adoption of class-representative constitutions providing for representative government bodies in some

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German states, gradually (first in the South-German lands) suffrage was implemented. It was rather limited: not universal, not equal, in most cases not direct and in most cases by secret ballot. Practically everywhere the right to vote personally was given to men only. Though in some German lands suffrage (the right to vote through a representative) was granted also to women. On the eve of the revolution of 1848 the portion of people granted suffrage in the German states varied from 0.5 to 17 percent (depending on the character of a state or district). But, despite all this, the suffrage in many German states was fairly democratic if compared with other European countries.

The development of suffrage in Prussia can provide us with a general notion of the German elections on every level in 1815-1918. Elections of local government bodies, of provincial bodies and elections of the united landtags in the first half of the XIX century cannot be described as free or fair, although they were elections by secret ballot, because nearly 90 percent of population had not the right to vote (on the religious and national grounds as well). Also it should be noted that the elective representative bodies in Prussia and in other German states did not play any important role as it were the monarchs who really had power and authority. It was not until 1848 when in Prussia people's representations were formed on the basis of rather democratic (though not direct) elections.

The Prussian pattern of the suffrage development was like this. First they intended to calm the population by granting the rights to form the representative local government bodies, but it proved insufficient. Then these rights were extended to the regional representative bodies, but it proved insufficient either. Later the united landtags of the German states were set but the citizens still demanded the people's representation and the monarchs gave in again. Eventually as revolts occurred, the idea of elective all-German people's representative organ was realized. The population of most German states in 1848 was granted temporarily rather large elective rights to elect representative government bodies of every level.

As early as in 1849 three-class suffrage was implemented to elect the Prussian landtag. According to the suffrage the minority (those who belonged to the first and

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second classes) selected quite a few times more electors than the majority of voters (those who belonged to the third class). This suffrage determined the membership of the landtag. It consisted mostly of deputies who defended the interests of the well-to-do citizens.

The Prussian suffrage evolved against a background of the revolutionary movement in the following way: no democratic elections – the revolution of 1848 – implementation of comparatively universal, equal suffrage – decline in the revolutionary movement – three-class undemocratic suffrage – the revolution of 1918 – universal equal suffrage.

Because of considerable faults in limited class suffrage in Prussia the people were not very active in elections. Under the three-class suffrage it were the third-class voters who above all ignored elections because they saw that they could not affect the situation. The limited suffrage met the interests mostly of the wealthiest citizens thus the wishes of the far greater part of the population – the poorer citizens – were considerably ignored [1, p. 2].

Yet, despite its undemocratic character the Prussian three-class suffrage did allow the greater part of men to express their opinion in elections. We analyzed the statistics and established that in Prussia the portion of the citizens having the elective rights was about 30 percent larger than in England at the same period of time.

The Prussian three-class suffrage was almost universal (granted to the greater part of the men's population), indirect, unequal; elections were held by open voting (the right for the secret vote went through a number of curious transformations: secret vote by ballot – secret vote by voting paper – open vote).

According to the legislation on the election of the first All-German National Assembly in 1848 citizens of some German Union states were granted the universal (for men), equal, direct suffrage by secret vote, while in other states the citizens (men only) were content with the relatively universal (there were some qualification requirements about financial independence or tax qualification), equal, indirect suffrage by open vote. Despite the relatively democratic suffrage in the German states

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only about 70 percent of voters took part in the election of the Frankfurt National Assembly.

On 12 April 1849 a law was passed “On election of the People’s Chamber of Germany”. This law contained almost every principle of democratic suffrage. Men were granted relatively universal, equal, direct suffrage by secret vote. However the law never entered into force.

This law which came to be a sample of democratic suffrage for many countries for many years can be defined as one of the most outstanding events in the world’s development of the law science and democracy [6, 7].

References:

1. Bokov J.A. Analysis of the class elections of the bodies of state power in Prussia and Ancient Rome// Sbornik nauchnyh trudov po materialam mezhdunarodnoj nauchno-prakticheskoj konferencii «Sovremennye napravlenija teoreticheskih i prikladnyh issledovanij, 2010». Tom 14. Juridicheskie i politicheskie nauki. – Odessa: Chernomor'e, 2010. – S. 3-6.

2. Bokov J.A.King Friedric Wilhelm III and the elective rights of the Prussian citizens in the early XIX century//Sbornik nauchnyh trudov Sworld po materialam mezhdunarodnoj nauchno-prakticheskoj konferencii. 2013. T. 29. № 1. - S. 72-75.

3. Bokov Ju.A. Zarozhdenie izbiratel'nyh prav prussakov (19 nojabrja 1808 goda - 30 maja 1849 goda)//Vestnik Volgogradskogo gosudarstvennogo universiteta. Serija 5: Jurisprudencija. 2012. № 2. - S. 99-105.

4. Bokov Ju.A. Izbiratel'nye prava grazhdan germanskih gosudarstv v pervoj polovine XIX veka// Vestnik Volgogradskogo gosudarstvennogo universiteta. Serija 9. Issledovanija molodyh uchjonyh. Nauchno-teoreticheskij zhurnal. Vypusk 5. 2006. - P. 52-59.

5. Bokov Ju.A. K voprosu ob ispol'zovanii ponjatij "grazhdanin" i "poddannyj" v pravovyh i politicheskih istochnikah// Sovremennye problemy nauki i obrazovanija. 2012. № 5. - S. 403-403.

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6. Bokov Ju.A. Stanovlenie aktivnogo izbiratel'nogo prava grazhdan germanskih gosudarstv v pervoj polovine XIX veka// Vestnik Volgogradskogo gosudarstvennogo universiteta. 2003-2004 god. Serija 5 «Jurisprudencija». Vypusk 6. – P. 90– 94.

7. Bokov Ju.A. Formirovanie izbiratel'nyh prav germanskih grazhdan (1815-1918 gg.): Diss. … kand. jurid. nauk. - Volgograd: VolGU, 2003. - 219 p.

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Savojska S.V.

ISTORIOLOGIJA OF A SPRING BASE OF LANGUAGEPOLITICS AS KRATOLOGITSHCNOGO OF THE PHENOMENON

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In the article the theory of history of forming, origin and development of linguistic policy, is analysed as component and inalienable part lingually-communicative politicians of the Ukrainian state, its essence, maintenance, degree of scientific development and spring base. The political science going is examined near development of istoriko-politichnikh events, which are related to interpretation of concepts “language”, “politician”, “power”, “linguistic policy”, and also their intercommunication.

Keywords: istoriologiya, linguistic policy, state, polietnichniy socium, communications, identity, consolidation, structural, destructive.

An analysis of looks is to the phenomenon of languagepolitics, basis of that cons ists of two no less importantconcepts "language" and "politician", arrives at works of Aristotle, Homer, Heraclit, Hesiod, Demokrit, A.Meje, Pythagoras, Platon, Polibij, Protahor, Socrates, Solomon,Ciceron and other ancient thinkers.They considered that a language and politics are theindivisible phenomena, that are the inalienable constitu entof language politics, that in turn has a direct relation to thestate and power.Therefo

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re for Plato and Aristotle politics that is carried out bypower must be rational and stru ctural, and power honestand form. In their imagination power must consist of wisean d talented leaders, somebody to manage the state it doesnot can.For Solomon the stat, power and language, is associatedfirst of all with legality and order that is the most b lessing inthe conditions of sharp political fight between differentassociations.A large value he spared to the commonunication that isbase on understanding and mutual con cessions, thatinduces political actors to the mutual understanding andconsent. Interco mmunication of language and politics setforth A.Meje.According to his opinion, a "fi ght for a language is thesymbol of race for power". Pythagoras considered that theciti zens of one state can attain the mutual understandingonly then, when they will be in e verything even. Демокритrexamined a language and politics as an art.After his theory, power must honestly serve to the citizensthat must be free and солідарними. She mu st providedifferent interests of communities, only then there will be acalmness and m utual understanding in the state. Tomanage the state, as a large thinker considered, no teverybody can, because each have correspondingknowledge and capabilities.If there is not the mutual understanding between power andcitizens, then such state, after the t heory of Plato, will perishthrough self-contradictions, abuses and conflicts.

These fruitful ideas got further development and scaleneinterpretation in labour s both foreignscientists(E.Benvenist, U.Vajnrajch, M.Hajdehher,V.Humbolt, Kennet D.MacRej, Ch.OrtehaHasset) andUkrainian R.Kis, I.Kresina, I.Kuras, I.Lopuchsynscy j,O.Majboroda, L.Masenco, L.Nahorna, O.Potebnja,M.Feller, N.Schymarova.In disse rtation work their looks are analysed to languagepolitics as specific studies are about power phenomenon, system ofmeasures of the state, that head for the decision of lang uage and politicalproblems in поліетнічному society. O.Potebnjaexamined a languag e through the prism of communicationplane, that has original character, unique cultur e after thatwe cognize people.L.Nahorna examines a language as social phenomenon, the system of communication, foundation of historicalmemory that unites people in th e days of ordeals, and assuch, that is an original "window in the world", becauseform s presentation of man(nations), his taste, creating themacrofield for spiritual vital func tions, stands on the watch ofstate, cultural, ideological, informative sovereignty of nat

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ion,forms national consciousness and plays a decision rolebecoming of national identi ty. Languagepolitics, after the theory of L.Nahorna, − it first of all anxietyabout the c ulture of speech and speech cultural space[1, p. 234-274].

Considerable payment in the історіологію problems oflanguage politics are labo urs of the Russian and Ukrainianscientists, in particular I.Varzar, N.Kareev, Yu.Seme nov,N.Smolenscyj and other their conceptions are Examinedand fruitfulness of looks of the Russian scientist N.Kareev,that worked out a new studies are about historymet hod, is marked.In particular the Ukrainian scientist I.Varzar entered oneand a half ten of new theoretical conceptions and over thirtyconcepts and terms to scientific turnov er.He entered to the scientific consumption the method oftріадної correlation of valu es and orientations of sociopolitical development, that allowed to look at the investiga tedproblem newly, generalize material, distinguish basic andanalyse those aspects, wi th the help of that it is possiblecardinally to change a language situation in the state, t hatwill give an opportunity to support culturalvariety, realize the right of national min orities of national andcultural selfdetermination and defence of their originality, topro tect a title ethnos, if to take into account him colonialposition in the past, without the state без держави and assimilatorypressure from the side of the imperialistic states[2, p. 213, 228-230].

Using teaching about the history of method managed to find a constructive and destructive approaches to the implementation of language policy in the state. A constructive approach is found in the writings of scholars such as V.Andryschenco, T.Velytschco, L.Volha, V.Danylenco, O.Danyltschenco, N.Dytschec, S.Dovhyj, S.Karavanscyj, V.Kozevnicov, V.Kremen, M.Kuzmenco, V.Kulyc, I.Kuras, V.Lyzantschuc, V.Lytvyn, V.Majboroda, L.Mazco, F.Medvid, Ju.Mosencis, M.Naenco, L.Nahorna, S.Nicolaenco, I.Ohienco, L.Opanasenco, N.Pobirtschenco, D.Rozovyc, V.Soldatenco, M.Stricha, O.Tystschenco, V.Tryhubenco, I.Juschtuc and others. It is proved that the constructive state language policy can be called only when it serves the people, combines it protects the interests of the state, developing a national culture, protects the functioning and dissemination of the languages of the national minorities and the state (official) language in all spheres of socio-political

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life and in all regions of the state, honors the history and etc. Constructive was the language policy of the Verkhovna Rada adopted the law “On languages in the Ukrainian SSR”, which proclaimed Ukrainian the only state language. The second time such constructivism was manifested in the adoption of the Constitution of independent Ukraine, Article 10 of the consolidated this status. This gave the opportunity to pursue a constructive and balanced linguistic-communicative policy in all spheres of public life.The main irrational factor in the language policy of the state was the delay in adoption of the new law on languages in Ukraine, because the current law was not able to properly perform the tasks that have been entrusted to the new conditions. All other irrational actions were connected with this conflict. Certain aspects of linguistic-communicative policy of the state expressed his writings I.Kuras. It constructivism teaches understanding not only with the opposition, but with the whole civil society, which is born [3, p. 104-106, 175-192, 249-255].

Examining the historical development of language policy in the Ukrainian state, the attention of scientists were ethnic, linguistic, cultural, political, national, state, ideological and other issues of multiethnic society. In this regard, analyzes the works of history and political content, which traced the development of language policy in retrospect. This study S.Herehova, V.Danylenco, O.Danyltshcenco, N.Dytschec, S.Karavanscyj, M.Kuzmenco, O.Kuzminez, P.Lazetschco, V.Lensca, V.Majboroda, Ju.Mosencis, N.Pobirtschenco, D.Rozovyc, V.Romanzov, V.Soldatenco, V.Tryhubenco, Ju.Schevelova, I.Zependa and others. Generally the history of establishment and development of the Ukrainian language and language policy as a whole, which was conducted by the Ukrainian state at different stages of its historical and political development. Found the language policy, which was held in ancient Ukrainian state, in the Great Lithuanian Principality, the day of the Cossacks and the Cossack, which created the monuments old Ukrainian (Russian) language, which was used in the sense of the official and business language.It is worth to highlight the outstanding role played by business speech in political decision-making and the conclusion of agreements concerning the language policy of the state. Such open discourses, language and political communications positively

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influence the political life of society, to the interstate and between the authorities relations etc. Business effective consultations at the state level contribute to the democratization of public life, strengthen trust between different branches of government. The great value has the business environment, which creates an atmosphere of competence, confidence to the language policy of the state, words and deeds, loyalty in relationship between linguistic and political actors of the political process. Business language performs the function of міжсферного Communicator and frame of reference of the Ukrainian people, which is achieved on the basis of compromises and imperative consent as an important part of the consolidation of the whole of multiethnic society. The status of the literary Ukrainian language is used in literature, journalism, publishing, education, culture, science, law, military sphere, etc[4].

Analyses of labour И.Aznjuc, V.Horbatenco, O.Zaremby, P.Kononenco, N.Koschova, O.Kryvyzka, O.Majboroda, T.Marusyc, L.Masenco, L.Nahorna, V.Panibydlasca, M.Pantschyc, O.Pohribnyj, S.Rymarenco, V.Kulic, Ju.Schapoval, Ju.Schemschutschenco, O.Schulha and other Investigated destructive component of the language policy of the state to avoid further split of the Ukrainian multi-ethnic community, to preserve the culture and native language of the Ukrainian nation and Ukrainian state unitary, Catholic and independent. Analyzed colonial language policy such neighboring States as Poland, Russia, Hungary and Romania, which was held on the territory of captive of the Ukrainian state in the different periods of its socio-political development. Thoroughly analyzed русифікаційні processes, which were held in the USSR in the field of education in Soviet Ukraine, using anti-Ukrainian essentially acts: “On strengthening of relations between school and life”, “On strengthening the study and teaching of Russian language and literature”, “on additional measures for improvement of the Russian language in secondary schools and institutions of the Union republics”. In General, the language policies of these States had glucocorticoids, cultural, educational, scientific and political development of the Ukrainian people, the prohibition of the Ukrainian language in all spheres of the socio-political life of the state [5].

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Considered works of scientists devoted to the destructive policy, in particular linguistic conflicts (labour O.Zaremba, A.Kisse, V.Kotyhorenco, M.Kostjuc, O.Kryvutsca, V.Kulik, M.Lartschenco, O.Lihostova, O.Majboroda, O.Maruchovsca, L.Masenco, M.Pantschyc, S.Rymarenco, Ju.Saplina, T.Senjuschcina, S.Scumljanscuj), linguistic separatism (labour Ju.Baleha, B.Hdal, O.Hevarina, Ja.Horjanyn, V.Danyljuc, O.Duhun, R.Lozunscuj, O.Myschanytsch, V.Panibydlasca, O.Sydco, M.Smolyn, S.Smirnov), linguistic Russification and assimilation (labour I.Dziuba, I.Dijac, I.Kuras, L.Nahorna, L.Masenco, V.Scljar, N.Tratsch), the language of danger (labour M.Vavryntschuc, O.Danyljan, O.Дzjoban, Ju.Didenco, O.Kryvytsca, V.Kotyhorenco, L.Masenco, M.Panova, V.Scvirsca). It is substantiated that the destructive language policy, which was conducted in the USSR was transformed into an independent Ukraine Pro-Russian political forces, with all the problems that existed in education, media, business, cultural and other spheres. For example, the number of books that were published in the 70s in the field of education in the Ukrainian language, dropped to the level of 20-ies. In the mid 80-ies of the last century learning almost half of pupils in Ukraine was carried out in Russian language. During the reign of V.Scherbyzcyj Russian-Ukrainian bilingualism has reached its logical conclusion. the 1970 s I.Dijac, T.Marusyc, L.Masenco, A.Pohribnyj and other scholars estimate as a period of ruthless elimination of all, that contain at least hint at the Ukrainian identity. The first half of the 1980 s marked the intensive Russification of all spheres of public life. The share of scientific and technical literature in the Ukrainian language was only 12,8%. In this regard, in the end of 80s, the protests against the policy of Russification become organized. It was found that in Lviv operated numerous informal associations: Ukrainian cultural club, Club of fans of history and culture “Lev Association” and others, which set the task to revive the Ukrainian language and give it the status of a state. Became Russian on the territory of Ukraine and institutions, since the financing of education was carried out by a residual principle lacked the educational-methodical literature, teachers and professors. Protest nationally-conscious public continued to grow. Against such a language policy strongly advocated progressive Ukrainian intelligentsia [6].

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The problem of the relationship of language and communication policy of the state and Ukrainian politicians are interested in Ukrainian scientists recently. It is a single labour both Ukrainian and Russian scientists - I.Abramovytsch, O.Balynsca, T.Brydco, M.Vasylyc, and. A.Ermolenco, O.Zernezca, S.Lebedeva, N.Luman, V.Machinova, L.Nahorna, I.Sachiullina, A.Solovjova, O.Ubejvolc, A.Токarsca, L.Chabermas, O.Schevtschenco, D.Jacovleva and others that focus on particular aspects of language and political communication. It is established that the characteristic features of political communication is the bureaucracy and dual policy, which takes place during an election campaign, parliamentary debates, official speeches of heads of state, designed for mass audiences. Dual language policy of the state which is applied in the conditions of competition and is designed to victory in the base for a particular candidate regions, is a PR-technology, which is targeted at winning the sympathy of the voters and a gain or retain power. Analyzed the crisis state language policy in Ukraine, which increased in connection with the adoption of the new law “On state language policy”, started the language problem in a deadlock. Історіологія indicates that the destructive language policy of Ukrainian authorities hindered the linguistic-communicative process has led to a deterioration in the sphere of language. The struggle between the Ukrainian and Russian languages deteriorated and turned into a competition of two languages and opposing ideologies, which are conditionally divided the Ukrainian society and the Ukrainian state into two parts on linguistic grounds, each protecting their language and culture. The relationship mentioned above processes received in a peculiar interpretation of the geopolitical concepts O.Bahan, O.Belov, and the poet have, O.Duhin, Ch.Rudytsch, M.Smolyn, M.Schulha and others[7; 8].

In contrast to the destructive policy, which is carried out in modern Ukraine Pro-Russian political forces of the state, are considered works of scientists devoted to the language of consolidation (labour V.Horodjanenco, I.Ivanov, A.Kostyrev, I.Kuras, L.Tocar) and linguistic identity (labour M.Гordienco, T.Voropaeva, N.Kyrjan, A.Kuzmyc, H.Redcina). It is proved that the national unity, which is based on the linguistic-communicative policy, is reached between the authorities and the

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people, ethnic groups, politicians, leaders of political forces, the authorities and the opposition regions of one state so thanks to tolerance, mutual understanding and friendly relations which are built upon a mutual desire. Factors holding linguistic-communicative policy is a set of subject-management framework, based on constructivism, rationalism, mutual understanding and agreement. Linguistic-communicative policy is effective only when it appeals to the community, is an open, democratic, sincere and moral. Linguistic-communicative policy is imperative consolidation of a polyethnic Ukrainian society and an indispensable prerequisite for the cultural-political and cultural development of the state.

Thus, the science of history how the new science or method in Ukraine makes its first steps, because scientific works of Ukrainian scientists in the teaching about the history of historical science theme until enough. In this regard, we shall try to give a definition of this phenomenon: teaching about the history of historical science is the teaching about the history of historical science, its Genesis and evolution. This is a factor of language communication life and effective the context of the political sphere, as well as a system of generalized knowledge of linguistic-communicative policy of the state as a specific the doctrine of the authorities phenomenon, which is considered in the context of the current Ukrainian policy areas. Is a set of generalized provisions of linguistic-communicative policy, which forms a constructive (rational) and destructive (irrational) policy of the state, which is able to consolidate or split the multiethnic society.

Literature:

1. Nagorna L. Politichna language and linguistic policy: range of possibilities of political linguistics. – K.: world View, 2005. – 315 s.

2. Varzar I. Politichna ethnology: propedevt. course: avt. pidruch. / I.M.Varzar. it is a 2-ge kind., pererobl. but dopov. – K.: of DP “Kind. a house is “Personnel”, 2011. – 354 s.

3. Kuras I. Etnopolitika: history and contemporaneity. Articles, appearances, interviews of 90th. K.: IPiEND 1999.— S. 266. — 656 s.

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4. Yuschuk I. A language is our Ukrainian: articles, appearances, reflections. – K.: Kind. a center is «Education», 2003. – 168 s.

5. Masenko L. “Absence of public linguistic policy as factor of political krizi”/http://www.lrc.org.ua/projects/mova-ua-masenko.html.

6. Kresina I. Ukrainska national consciousness and modern political processes: Etnopolitichniy analysis. – K.: Higher school, 1998. – 391 s.

7. Shevelev Yu. Ukrainska language in the first half of the twentieth age (1900 – 1941). State and status. it is Contemporaneity, 1987.

8. Dzyuba I. Internacionalizm or rusifikaciya? it is Kyiv: A publishing house is the Kiev “Mohyla academy”, 2005. – 336 s.

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REQUIREMENT TO CONSIDER THE HISTORICAL AND OTHER LOCAL TRADITIONS OF LOCAL GOVERNMENTS (ILLUSTRATED REPUBLIC OF BASHKORTOSTAN)

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The article reveals the essence of the provisions of the law on account of the historical and other local traditions of local self-government. The author notes that the accounting is carried out in the publication of municipal legal acts in matters of local importance, as well as the interaction between local governments and various stakeholders.

Key words: traditions, municipal acts, local government, local issues.

In accordance with Art. 1 of the Federal Act of October 6, 2003 № 131-FZ "On General Principles of Local Self-Government" (the Federal Law № 131-FZ), local

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self-government in the Russian Federation is based on the interests of the population, taking into account historical and other local traditions.

What is meant by this definition? This means that in dealing with local issues by local authorities, the exercise of power directly by the people, the realization of certain state powers necessary to take into account the tradition. Here, by tradition to understand the mechanism of transfer of experience from generation to generation, a kind of "unwritten law" in society [1,p. 12]. They express the desire of people to keep the legacy of previous generations of behaviors that arise because of the spread of an example, the perceived and approved by the society. Thus, in our study a tradition we understand certain social control as the "transmission mechanism" of the political, legal and moral values within a particular municipality.

With respect to accounting for historical and other local traditions must specify the following:

I. Accounting traditions need to solve local issues, the publication by local authorities of municipal regulations. First, in order to preserve the traditions can be published legal acts, such as in the Republic of Bashkortostan Salavat City District Council of the Republic of Bashkortostan Salavat city from September 23, 2010 N 2-37/375 adopted a resolution "On measures to support and preservation of national traditions and customs, unique culture of the peoples living in the city district of the Republic of Bashkortostan Salavat. "

Second, the legislation may create new traditions. For example, the head of the Administration of Ufa City Municipal District I. Yalalov 25.01.2013g signed a decree to contest for the best individual dwelling house, the best group of single-family homes that were built in the city. According to the organizers, such a competition should be held annually, which should contribute to the further development of individual housing construction in Ufa [2].

Take into account the historical and other local traditions of local self-government may in enforcement.

In accordance with the Federal Law № 131-FZ, local governments create conditions for the inhabitants of services trade and consumer services. To this end,

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they give permission for siting retail trade and consumer services in the territory of the municipality. For example, the administration of the Resolution of the rural settlement Mursalimkinsky Salavat village council district of Bashkortostan on 13 May 2011 approved the number 71: The procedure for issuing permits for seasonal non-stationary objects small retail trade in agricultural settlements, in order of placement of the rural settlement of non-stationary objects small retail trade and consumer services (pavilions, kiosks), the Regulation on the organization of the retail trade of mobile objects in the municipal district of Salavat area, size of the area of land used for the objects of the mobile retail trade, according to assortment list, the special conditions of the goods in small retail outlets, the Regulation on the organization of work "summer Cafes" in the rural community, as well as deployment of mobile objects small trade and dislocation for placement of "summer café" in the rural community. As you can see to the needs of the population in certain products, goods or services related to nationality, religion may be granted permission to organize tents, booths, church benches or "cafe".

II. Accounting for historical and other local traditions have to be in the public interest. In the interests of data subjects have to act all local governments, including public authorities that regulate this requirement in their regulations. Adequate may be recognized only that the municipal authority, which is based on the interests of the population and seeks to address issues of local importance, guided directly to the will of the citizens residing in the territory of the municipality, or the components of the municipal community. The implementation of local self-government on the basis of local traditions is the result of its implementation in the interests of the population.

The very same people should be interested in preserving the traditions of their cultural development, preservation of national characteristics. Moreover, international experience shows that the most progress in the modernization of society seeking those people who, renouncing their national traditions, the nature of their culture, develop on the basis of its experience in other states and nations. However, it is inadmissible mechanical borrowing someone else's experience and other values that do not meet the mentality of the people, and they are not perceived [3,p. 34].

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Ignoring history and local traditions various subjects of power can lead to conflict in the first place between the authorities and the population. For example, as happened in the Republic of Bashkortostan, where the claim of the journalist Sergei Dulova Supreme Court quashed the holidays Muslim holiday Eid al Fitr and Eid al- [4].

III. In order to reflect the traditions of individual sections of the local community in the municipality can be created by different structures. For example, the Council of Administration and the Municipal District of the Republic of Bashkortostan Sterlitamakskij district approved the Regulation on the Board on matters of church-state relations Municipal District Sterlitamakskij region of Bashkortostan, which is a public advisory collegial body, and in the activity interacts with the Council on Church-state relations in President of the Republic of Bashkortostan. One of the goals of its creation is to assist in spreading the ideas of spiritual unity, tolerance, respect for history, culture and traditions of religious associations.

Thus, the requirement of Article 1 of the Federal Law № 131-FZ on account of the historical and other local traditions of the need to create in each municipality a system of local government, which is based on common principles and standards of the federal regional legislation, while at the same time would be consistent foundations of the established population and allowed to maintain and build on these foundations.

References:

1. Ledovskaya O.V. The role of tradition in contemporary culture: a thesis for the degree of Candidate of Philosophy. Stavropol, 2006. 151.

2. Whose house is better. "The Roots», № 5 (825), February 6, 2013.

3. Malko A.V., Zatonskiy V.A. Legal policy in the sphere of local self-government as a means of strengthening Russian statehood / / Law. 2006. Number 11.

4. URL.http://ufa.kp.ru/online/news/982281(date of circulation13.04.2013).

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SYSTEMATICITY IN STRATEGIC PROGNOSTICATION OF THE USA FOREIGN POLICY

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This article is highlighting the special use of the strategic prediction process. This problem is analyzed in the theoretical and practical aspects. There is a brief analysis of the systematic approach usage in the prediction of the USA foreign policy.

Key words: systematic principle, analytic centers, political prediction, political analysis.

The research of strategical prognostication, in particular the USA, where was its main theoretical and applied formation grounded, is very important, first of all, because of the political theory development and its adoption in the modern world of political practice. Nowadays, when political systems are making the huge turn to the democratical values, humanitarian priorities, culture of piece and mutual cooperation on the international arena, without the detail professional analysis and making out prognostications, avaliable and historically based possibilities for democratical transformations, making out of which is a pretty risky deal, sometimes an impossible one.

The main role in the providing USA foreign policy strategy belongs to the main American “think tanks” (under the term “think tanks” one means a group, institute or centre, organized for the intensive investigation and conceptual providing of the political and secutiry strategies of the USA) that make out the American behaviour scenary in the world, as well as, basic grounds for the international strategy political assessment, give the recomendations for the most problems according to the foreign and domestic policy in general [5, p.2].

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Prognostication, the basis of which grounds in the person's cognitive activity is getting an important kind of social prognostication. First of all, it is connected to the one's experience, modern phenomenons and processes knowledge. It is based on the scientific data, dynamic and statistic rules. Social process prognostication is an independent prognostication branch that, first of all, is combining the primary data of history, sociology, political science, statistics, demography etc. Moreover, every single prognostication has the veritable character.

The most difficult kind of prognostication is a political one because it deales with the processes and events on the political arena. Politics touches the million's interests and theirs ways of life, and politicians, specially, political elite members have to prognose the results of their actions.

Startegical prognostication is based on the situation modelling knowlegde, development tendency analyse abilities, and according to this data one gets the abilities to find out the changes necessity, work out the changes strategy, use the save methods and it needs from the subject some abilities to embody the strategy into life. Strategical prognostication gives an opportunity to determine the real state of things, as well as, total possibilities, showed by means of this analysis, dynamics and perspectives of single objects and as well as totality of objects development that are making out the system and factors or grounds that speed up or slow down the movement to the aim. According to the knowledge one can make out some variations of decisions for the situations development influence in the certain direction.

The principles of strategical prognostication are made out due to the concerete scientifical prognosticational methods of research. Nowadays there is a great amount of general as well as particular social prognostication methods. Austrian futurist Erich Yatch thinks that there are more than 200 of them and it is not the end.

Political analysis is, first of all, the concentrate effort aimed at the research and finding out the key properties, the very alternative versions of the political course.

Political and social purpose analitical centres in the West began to appear starting the beginning of the last century. From the very beginning they represented themselves as university structures which were involved to the govermental

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programms making. They were intellectual cooporations that tried to combine the scientific innovative offers with the political science, grounding social humanitarian modelling.

Specialists are determining the think tanks in a different way. Anaway, they can be determined in general as: 1) institutes, cooporations or groups organized for the interdisciplinary researches; 2) consultative experts committees that provide the researches and give some special tips to the government; 3) independent intellectual structures that embody the players in the political process. Besides this term is used as a general title for the military laboratories, cooporations, academies, organizations that are supporting multidisciplinary theoretics and intellectuals that are orientated towards the analytical or political recommendations working out. [2, p.6]

For the systematization and charactiristic step by step development of think tank scientists is using the following criteria as the time of forming; oraganizing mission

(determinant tasks they are solving); the way of acting and its structural organization way; specific way of cooporation with the government [3].

Nowadays a lot of transnational non govermental organizations that are based in the USA are aimed towards the researchment of the different ways of the world politics. It is better to determine four basic types of the USA NGO: specific ones with the determinate professional specialization; cosmopolitan based on spiritual development of the person; transnational, they include the transnational cooporation; as well as, analytic cooporations or think trusts. The last ones play a key role in the foreign policy of the USA.

Analytical cooporations can be determinated as the basic points of the USA global force. They are taking part in the solving problems of the political reality correction by means of the full cycle of analitical production: from the problem analysis to the decisions implementation in terms of mamagenent system. The part of of them is oriented towards the cooperation with the global insitutions, first of all, UN, part is a link of state mechanizm. Formally, independent intellectual institutions are organized on the model of business cooporations, they have often branches. As,

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for example, Cernegie foundation has the branch in Russia, RAND – in GB and in Holland [4, p. 2].

"Think tanks" are thought as high-principled base of the international political power of the USA. Here the idea of generating process is combinined with the applied pecularity within the simultaneous realization of aim strategy that means the concrete social economic and political results. The last one positon differs them from the exclusively academic structures. Very often analytics are dealing with the high-principled providing of the political cultural expansion of the USA. Such a mission has Carnegie Endowment for the International Peace and Brookings Institution. The leading think tanks are under the influence of state interests, first of all, political economical and security interests. According to the high level of the American society economization level such interests are the same level of importance for transnational cooporations as well. The activity of the think tanks is mostly determined by the influence of the cooporation that provides the research financing, political leaders activity support, periodical and special literature publishment. Analytical structures are the special link of the American political system governance that combines in a functional way cooporation activity with the foreign activity of the state. American analytic cooporation functioning is truly supported the big business, so it is more than just a simple reflection of the social structure society pecularities.

The objective ground for the strategic prognostication according the American analytic centres is a systematic building of the political phenomenon or process that is researched. The point is that, orientation to the systematic principle makes up the one from many main pecularities of the modern scientific style of thinking that appeared in the second half of the 20 century in the USA. It was taking the leading places during the long period of time in the world science. At the same time, during this period of time there are a lot discussions because of the aims and tasks of the "general system theory", system principle content, especially in political researches.

Prognostication of the social political processes needs a historical experience from one side and the traditions of the certain society. From another side, logics of the system method application is combined with the civilization experience that

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means that modernization encloses all the society spheres. Modern theoreticians determin political as well as social, economical, spiritual and other types of modernization. Political modernization with its specificity is a synthesizing according to the given above types because of its main characteristics are providing structural and qualitative changes not only in politics, but in social, economical, cultural and other spheres, creating the terms for stability and consolidation of society.

"The main point of system analisys and prognostication social and political prosecces demands are next: the research of certain social system in the modern conditions is impossible if it is not crossing its borders. Such an approach can change not only the way of thinking but also practical actions in process of social organizm reformation. Neglecting the principle of the old system borders crossing, unwillingless to refuse stereotype ideas, as a rule, instead of society modernization cause its visibility" [1, p. 47].

System approach of the state analytic structures creates a clever alternative during the making out of strategical decisions. Special councils and associations within the think tanks are organizing different researches of the actual problems in foreign affairs. Their advantage in taking of foreign policy decisions is a possibility to use its own structure for the research activity results in the certain political programs. The institute of advicers itself gives a chance to carry out the task of foreign policy management by means of more flexible mechanizm. As a rule, the most important influence belonbs to the advicers that are closer to the leaders. Disputation in the collegiate circle can be strict but they don't ruin the general line of the USA behaviour on the international arena. Moreover, the potential of the analysts conformism in team is carried out not in a complete way in favour of security forces. However group or corporative logics of the top-managers about the foreign policy management is mostly based on the general system ideology.

The principle of prognostication systematic is combination of all the prognosed indexes of the object, its environment and important factors.

System approach is a methodology of the object's analysis in terms of nature and society as well, as a system, and the prognostication objects can be considered as

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systems, so it can be applied to problems of prognostication. Such a principle is the main one of the USA analytic centers.

The relationship between the elements in the system has some certain properties that are characterizing connection, interaction or orderliness of the given elements, so they are the certain display of the central principle about integrity of the system. There are two main functions of the system approach: a) formulation of the problems for getting new knowledge and solving new tasks; b) methodological analysis of the certain knowledge is carried out on basis of integrity principle, according to this principle the interconnection and cooperation of the elements are producing new system properties of the object that are not typical for its single elements and for the number of other principles.

In such a way, prognostication of the state or behavior of the system cannot be considered as formal prognostication of the state or the of system elements action, there should be taken into account their interconnection and appearance of the new properties due to the new state and behavior of the components.

Systematic in prognostication means that policy is a united object, but from the other hand, it is a complex of the independent blocks of prognostication. Such a principle gives a chance to get a visible model of the researched object in the system of its direct and reverse, hierarchical and coordination relations, determine its main system features – basic structure, content, functioning, ways of realization [1, p. 46].

So, the matter of system prognostication in the American school of political analysis needs the usage of cooperation within the system, as well as, the connection ways between the object of prognostication and prognostication background, in other words, evironment. System analysis demands such a prognosis construction that is based on the models and means system.

REFERENCES

1. Горбатенко В. Принципи, методи і основні етапи політичного прогнозування // Людина і політика. – 2003. – № 5. – С. 46–55.

2. Горбатенко В.П., Петренко І.І. «Фабрики думок» і розвиток соціальної інженерії//Стратегічні пріоритети. – 2009. - №4 (13).– с.5-12.

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Downloaded from SWorld. Terms of Use http://www.sworld.com.ua/index.php/ru/e-journal/about-journal/terms-of-use

3. Boucher, S. Europe and its Think Tanks: a Promise to be Fulfilled. Report of Notre Europe think tank (2005) [Електронний ресурс]. – Режим доступу: http://www.notreeurope.eu/

4. Haas R. Think Tanks and U.S. Foreign Policy: A Policy – Makers Perspective // U.S. Department of States (www. states.gov.s/p/rem/ 15506 htm).

5. Hellebust L. Think Tank Explosion. Growth of the Independent Think Tank Industry in the United States / Lynn Hellebust. – Washington, DC: Government Research Center, 2007. – 5 p.

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PLACE AND ROLE OF THE MORAL LEGAL STATUSES DEFINING LEGAL STATUS OF THE PUBLIC PROSECUTOR'S WORKER IN THE RUSSIAN FEDERATION

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In the report standards of moral and legal character which, on a row with other acts, define the status of the public prosecutor's worker in the Russian Federation at the present stage are considered. The author allocated disputed issues and options of their permission are offered.

Keywords: place, role, legal status, public prosecutor's worker, ethical standards, code of professional and moral behavior, system of the moral principles, system of legal principles.

In recent years in the Russian legal framework there was a set of legal acts which fix moral requirements for the contents to certain representatives of subjects of law-enforcement system of our country. First of all, it is codes of professional ethics [1] which establish moral criteria of compliance (or discrepancies) to a post. Undoubtedly positive aspect of adoption of these codes as certain moral reference points generates many the incidents not resolved still having already legal

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consequences. For example, the status of codes as normative legal acts [2, 3, 4, 5] is disputable. After all they are accepted by authorized bodies as bylaws, but comprises norms of obligatory application which are absent in the profile law. Thus, broad interpretation and especially bylaw application, and in certain cases having also advisory nature, causes vigilance in legitimacy of the similar legislative decision.

This conclusion is confirmed by practice. For example, the norms regulating a moral aspect of activity of the public prosecutor's worker in the Russian Federation to steel by a subject of consideration Constitutional Vessels Russian Federation. In definition Constitutional the Vessels Russian Federation of 17.07.2012 N 1316-O "About refusal in acceptance to consideration of the complaint of citizen Novikov Ivan Vladimirovich violation of its constitutional laws by point 1 of article 41.7 and the subparagraph "in" point 1 of article 43 of the Federal law "About prosecutor's office of the Russian Federation" [6] it was specified that specifics of activity which is carried out by bodies and prosecutor's office establishments, predetermines special legal status of her workers proceeding from which the state, regulating an order of passing of public service in bodies and prosecutor's office establishments, including the dismissal bases from this service for guilty behavior, can establish in this sphere special rules (it is allocated by us – A.V.) what is (part 1) doesn't contradict articles 19, 37 (parts 1 and 3) and 55 (parts 2 and 3) of the Constitution of the Russian Federation and will be coordinated with point 2 of article 1 of the Convention the SPENDTHRIFT N 111 1958 concerning discrimination in the field of work and occupations according to which distinctions, exceptions or preferences in the field of work and the occupations, based on the specific (qualification) requirements connected with certain work, aren't considered as discrimination (definitions of the Constitutional Court of the Russian Federation of February 20, 2003 N 86-O and of January 25, 2012 N 225-O-O).

Thus, point 1 of article 41.7 and the subparagraph "in" point 1 of article 43 of the Federal law "About prosecutor's office of the Russian Federation", dismissals of public prosecutor's workers providing possibility for non-execution or inadequate execution of the official duties by them and commission of the offenses discrediting

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honor of the public prosecutor's worker, and also for violation of the oath of the prosecutor, consider features of activity of public prosecutor's workers, are directed on providing bodies and prosecutor's office establishments by the highly skilled employees possessing significant for implementation of specified professional activity moral qualities.

Thus use in norm of estimated concepts doesn't testify to uncertainty of its contents as a variety of the actual circumstances does impossible establishment of their exhaustive list in the law, and use by the legislator of the estimated characteristic pursues the aim of effective application of norm to unlimited number of concrete legal situations (The resolution of the Constitutional Court of the Russian Federation of June 30, 2011 N 14-P, definitions of the Constitutional Court of the Russian Federation of February 21, 2008 N 120-O-O and of March 19, 2009 N 231-O-O).

The carried-out analysis of the current legislation of the Russian Federation regulating activity of prosecutors of the Russian Federation, allows to claim that to ethical standards starts being given more and more attention. Their value at determination of legality in behavior of prosecutors becomes in some cases a decisive factor in compliance of a post.

References:

1. The order of the Prosecutor General's Office of the Russian Federation of 17.03.2010 No. 114 "About the statement and introduction in action of the Code of ethics of the public prosecutor's worker of the Russian Federation and the Concept of educational work in system of prosecutor's office of the Russian Federation"//Legality. 2010 . the No. 6 Code of Professional Ethics of the Lawyer (it is accepted by the All-Russian congress of lawyers 31.01.2003) (an edition of 05.04.2007)//the Messenger of Federal chamber of lawyers of the Russian Federation, N 3, 2010; Code of judicial ethics (утв. VIII All-Russian congress of judges 12.12.2012)//Russian justice. 2013 . No. 2. Page 50-57. etc.

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Downloaded from SWorld. Terms of Use http://www.sworld.com.ua/index.php/ru/e-journal/about-journal/terms-of-use

2. Borovkov A.V. Value of ethical standards at investigation of "tax crimes"//the Collection of scientific works Sworld on materials of the international scientific and practical conference. 2013 . T.29. 31 . Page 28-31.

3. Borovkov A.V. Ways of possible improvement of the legislation on criminal liability for evasion of taxes and/or collecting from the organizations//Taxes. 2006 . No. 3. Page 133-134.

4. Borovkov A.V. Improvement of the legislation of the Russian Federation in the sphere of investigation of tax crimes as a way of increase of the budgetary filling in the conditions of macroeconomic instability//the Messenger of the Volgograd state university. Series 5: Law. 2010 . No. 1. Page 107-111.

5. Borovkov A.V. Preyudition in investigation of tax crimes//the Messenger of the Volgograd state university. Series 5: Law. 2011 . T.1. No. 5-14. Page 222-224.

6. The document wasn't published. See: Union of Right Forces of "Konsultant Plus".

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BASES OF UKRAINE'S GEOPOLITICS (1990–1993)

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Introduction

A survive of a nation and its advance are impossible without an affective geopolitical strategy aimed at ensuring of its national interests in contemporary international circumstances. The above mentioned is important for all geopolitical units, but especially for newly ones including Ukraine. Its emergence had significantly changed the political architectonics of European continent.

A number of academic researches are dedicated to Ukraine's foreign policy because of practical and theoretical values of this issue [2-7; 13-15; 39; 41-45]. Researches investigate the place of Ukraine in the modern geopolitical space, a

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traditional dilemma East versus West in the context of the choice of geopolitical priorities and other vectors of a national geopolitical strategy on ensuring Ukrainian national interests. Resuming, authors study either an optimal model of Ukraine's geopolitical doctrine or particular foreign policy decisions as regard to its geopolitical priorities. That's why our investigation is targeted to highlight bases of Ukraine's geopolitics in the period of an elaboration and legitimization of its international stance as a new subject of the international politics (1990–1993).

Bases of Ukraine's geopolitics of the above mentioned period are under analysis within the framework of its bilateral relations, regional priorities in Europe and in post-soviet space and its key directions of multilateral cooperation.

Essential Part of the Research

Ukraine tried to ensure needs of it launching its bilateral relations and defining their priorities. After the proclamation of the state sovereignty on 16 July 1990 Ukraine stipulated the establishment of direct relations with foreign countries, the conclusion of international treaties with them, the exchange of diplomatic, consular and trade mission because of obtaining features of an international actor based on such international legal principles as sovereign equality of nations, non-interference into internal affairs and non-use of force in bilateral relations [8; 27-28]. Proclaiming the independence Ukraine supported the activation of economic ties with foreign countries including negotiations on granting a loan for structural economic reforms [16]. The state declared principles of reciprocity and good-neighborhood in its interactions with neighboring states [21; 33]. After the approval of the Act on independence by the national referendum on 1 December 1991 and begging of its recognition it established diplomatic relations with foreign countries declared the priority of norms of international law [9; 17-19; 23; 26]. Ukraine not only defined principles of bilateral relations, but also formed a systemic vision of their priorities in this period. They were the following: neighboring counties as a close environment of it (relations with Russia were seen as a distinctive partnership); Western countries – member states of the EU and NATO which had a guiding role in international politics (special stress had been made on relations with the USA); not distant geographically

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states of Central, Northern East, Southern East Europe, Balkan peninsula and Caucasian region; countries of Asia, Asian Pacific region, Africa and Latin America [32].

Ukraine declared its position related to its participation both in European processes and European structures in the context of its regional priorities [8; 37]. In the security domain it supported the idea of a secure and a stable peace in Europe [25]. This ambition had been a key priority before the elaboration of the conceptual vision of its foreign policy strategy [9; 29]. Not only Ukraine, but also European states formed their approaches on the collaboration in this geopolitical space [11-12]. Ukrainian priorities regarding it were the following: the participation in the framework of the Organization on Security and Cooperation in Europe (OSCE); deepening of its activity in Euro-Atlantic Partnership Council and North Atlantic Assembly; the attempt to joint to Council of Europe as a full-fledged member state; a perspective goal – the membership in European Communities [32]. Subregional Ukraine's priorities were the following: the strengthening of it activity in the Black Sea Economic Cooperation and the Danube Commission; the establishment of extensive ties with Mediterranean countries; the cooperation in the framework of the Central European Initiative, the Visegrád Group, the Nordic Council, the Council of the Baltic Sea States and development of the cooperation in the Carpathian region [32].

Relations between 15 republics of the formally existed USSR were the issue of a great importance for future contours of the international system. At the official level these relations were claimed to be significant with a necessity to form principles of them [36]. A special account was given for economic ties between them [23]. In this context post-soviet states wanted to preserve common monetary and customs unions and to coordinate foreign economic policies [34]. But final vision of the future of this geopolitical space didn't been existed. That's why in the concept of a new constitution of Ukraine a charter named "Ukraine in the Union of Sovereign States" was been written [31]. The idea of stability, development and comprehensive enlargement of economic contacts between all republics of the former USSR will be

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supported by Ukraine after the collapse of the Soviet Union [16; 19; 22]. Ukraine as one of the founders of the Commonwealth of Independent States (CIS) saw in it an international mechanism of bilateral cooperation and didn't support it becoming a subject of international law [40]. The CIS was been seen as instrument to solve a number of international legal issues on post-soviet legacy with its decisions of non-obligatory force for the member states [32]. Key directions of the activity of the CIS were defined. They were: consultations in foreign policy domain; the development of common economic space, the participation in Common European and Eurasian markets; customs policy; the development of countries transport and communications systems; the protection of natural environment; the participation in the process of the formation of a comprehensive system of ecological security; the battle against organized crime [1; 35]. Spheres of the primary importance in the framework of the CIS were been defined: political, economic, cultural branches, education, science, health, trade, natural environment protection and fostering a broad information exchange. Herein is also appropriate to mention the provision related to a special priority of neighboring countries in Ukraine's foreign policy including Ukrainian Russian relations as a distinctive partnership [10].

The dyad state – world is another integral part of the geopolitics of Ukraine. To ensure state sovereignty and promote national interest the country needed the participation in multilateral mechanisms of cooperation, especially in international intergovernmental organizations [8]. Because of the worsening of economic conditions the membership in international economic ones was been seen as a direction of a primary importance [23; 30]. The role of these multilateral instruments was preserved after the proclamation of the independence of Ukraine. It declared the desire to become a member state of the General Agreement on Tariffs and Trade (GATT), the International Monetary Fund (IMF), the International Bank of Reconstruction and Development (IBRD) as an observer for the begging and then as a full-fledged member [16]. After the national referendum on independence the United Nations and universal international organizations became the priority of Ukraine's multilateral diplomacy [32]. Ukraine accessed to founding treaties of the

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European Bank of Reconstruction and Development (EBRD), Interpol, the International Monetary Fund (IMF), International Finance Corporation (IFC), the International Development Association (IDA) and the Multilateral Investment Guarantee Agency (MIGA) [20; 24; 38].

Conclusions

In the period of obtaining status as an independent subject of the geopolitical space Ukraine elaborated its own vision of its. It defined geopolitical priorities. They were the following: bilateral relations; regional processes and structures in European continent and maintenance relations with post-soviet countries; the participation in the solution of global problems and the formation of a new world order using for these ends its membership in international organizations.

The classical thesis of the geopolitics on the importance of close environment of a state was implemented in Ukraine's bilateral relations. The countries of the first priority became: neighboring countries, member states of the EU and NATO, not distant geographically countries and other states located in Asia, Asian Pacific region, Africa and Latin America.

The maintenance of the regional security and stability became an integral part of Ukraine's policy towards European region by its participation in European processes and structures. Herein the priorities were been established: Organization on Security and Cooperation in Europe, the Euro-Atlantic Partnership Council, North Atlantic Assembly, the Council of Europe and a perspective goal – the membership in European Communities. Subregional Ukraine's priorities were the following: the Black Sea Economic Cooperation, the Danube Commission, Mediterranean countries, the Central European Initiative, the Visegrád Group, the Nordic Council, the Council of the Baltic Sea States and the cooperation in the Carpathian region.

To ensure the regional security is important to solve problems of the disintegration by peaceful means. That's why priorities of Ukraine in post-soviet space were the following: peaceful solution of legacy issues, maintaining economic ties both in bilateral level and in multilateral one in the framework of the Commonwealth of Independent States.

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The participation in international organizations and use of multilateral mechanisms provide a county opportunity to create a world order and effective promoting of its national interests. That's why among priorities of Ukraine in this realm were been the United Nations with its agencies and universal international organizations, especially of economic character.

References:

1. Alma-Ata Declaration from 21 December 1991. – Accessed by : // http://zakon1.rada.gov.ua

2. Baziv, D. P. Geopolitical strategy of Ukraine. – Kyiv : Koretsky institute of state and law of the NAS of Ukraine, 2000. – 192 p.

3. Bulgakov, V. A. Conceptual bases to determine geopolitical priorities of Ukraine : PhD thesis in Political Sciences : 23.00.01. – Kyiv, 2002. – 167 p.

4. Valevska, I. A. Geopolitical factors of Ukraine's foreign policy realization // Modern problems of international relations. – Issue 34. Part II. – P. 13–19.

5. Valevskyi, O. L., Gonchar, M. M. Structure of Ukraine's geopolitical interests. – Kyiv : NISS, 1995. – Issue 45. – 99 p.

6. Vasylenko, S. Geopolitical vectors of Ukraine : origins and peculiarities of their formation // New policy. – 2000. – № 3. – P. 46–52.

7. Vrublevskyi, V. A., Horoshkovsyi, V. I. Ukrainian way. Outlines : geopolitical status of Ukraine and its national interests. – Kyiv, 1997. – 426 p.

8. Declaration on the state sovereignty of Ukraine from 16 July 1990 № 55–XII. – Accessed by : // http://zakon1.rada.gov.ua

9. To the parliaments and peoples of the world : address of Verkhovna Rada of Ukraine from 5 December 1991 № 1927–XII // Bulletin of Verkhovna Rada of Ukraine. – 1992. – № 8. – Art. 45.

10.On the events in the Republic of Moldova : statement of of Verkhovna Rada of Ukraine from 6 March 1992 № 2181–XII. – Accessed by : // http://zakon1.rada.gov.ua

11.Statement of "12" on the future status of Russia and other former republics from 23 December 1991. – Accessed by : // http://zakon1.rada.gov.ua

URL: http://www.sworld.com.ua/e-journal/J21318.pdf
Downloaded from SWorld. Terms of Use http://www.sworld.com.ua/index.php/ru/e-journal/about-journal/terms-of-use

12.Krushynskyi, V., Konstantynov, V. Structural organization of Ukraine's international environment and its significant for Ukraine's foreign policy // Modern Ukraine's policy. Politicians and political analysts about it. – Kyiv, 2007. – P. 417–430.

13.Kulinych, M. A. Ukraine in a new geopolitical space : problems of regional and subregional security. – Kyiv : NISS, 1994. – Issue 29. – 30 p.

14.Madisson, V. V., Shahov, V. A. Modern Ukraine's geopolitics. – Kyiv : Lybid, 2003. – 176 p.

15.Mykhalchenko, M. I. Ukraine as a new historical reality : the odd player of Europe. – Drohobych : Vidrodzhennya, 2004. – 488 p.

16.Main directions of economic policy of Ukraine in the independence circumstances from 25 October 1991 № 1698a–12. – Accessed by : // http://zakon1.rada.gov.ua

17.On the recognition of the state independence of the Republic of Slovenia : resolution of the Presidium of Verkhovna Rada of Ukraine from 11 December 1991 № 1966–XII. – Accessed by : // http://zakon1.rada.gov.ua

18.On the recognition of the state independence of the Republic of Croatia : resolution of the Presidium of Verkhovna Rada of Ukraine from 11 December 1991 № 1966a–XII. – Accessed by : // http://zakon1.rada.gov.ua

19.On the establishment of diplomatic relations with former USSR countries : resolution of the Presidium of Verkhovna Rada of Ukraine from 11 December 1991 № 1968–XII. – Accessed by : // http://zakon1.rada.gov.ua

20.On Ukraine's access to the International Monetary Fund, International Bank of Reconstruction and Development, International Finance Corporation and Multilateral Investment Guarantee Agency : law of Ukraine from 3 June 1992 № 2402–XII. – Accessed by : // http://zakon1.rada.gov.ua

21.On the state border of Ukraine : law of Ukraine from 4 November 1991 № 1777–XII. – Accessed by : // http://zakon1.rada.gov.ua

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22.On the Treaty on Economic Community : resolution of the Presidium of Verkhovna Rada of Ukraine from 17 October 1991 № 1665–XII. – Accessed by : // http://zakon1.rada.gov.ua

23.On the economic independence of the Ukrainian SSR : law of the Ukrainian SSR from 3 August 1990 № 142–XII. – Accessed by : // http://zakon1.rada.gov.ua

24.On the approval of the Regulation on the President's Office on international affairs : order of the President of Ukraine from 29 January 1993 № 10/93–рп. – Accessed by : // http://zakon1.rada.gov.ua

25.On the Statement of the Presidium of Verkhovna Rada on the Treaty of Conventional Armed Forces in Europe from 1990 : resolution of the Presidium of Verkhovna Rada of Ukraine from 22 November 1991 № 1858–XII. – Accessed by : // http://zakon1.rada.gov.ua

26.On the Statement of the Presidium of Verkhovna Rada of Ukraine on the distribution to MPs of the Republic of Crimea questionnaire about the current status of the Republic of Crimes and the city of Sevastopol : resolution of the Presidium of Verkhovna Rada of Ukraine from 1 March 1993 № 3031–XII. – Accessed by : // http://zakon1.rada.gov.ua

27.On the Statement of the Presidium of Verkhovna Rada of the Ukrainian SSR on the conflict between Azerbaijan and Armenia : resolution of the Presidium of Verkhovna Rada of the Ukrainian SSR from 17 May 1991 № 1045–XII. – Accessed by : // http://zakon1.rada.gov.ua

28.On the Statement of the Presidium of Verkhovna Rada of the Ukrainian SSR due to the developments in Lithuania : resolution of the Presidium of Verkhovna Rada of the Ukrainian SSR from 14 January 1991 № 623–XII. – Accessed by : // http://zakon1.rada.gov.ua

29.On the address of Verkhovna Rada of Ukraine to the North Atlantic Assembly : resolution of Verkhovna Rada of Ukraine from 3 June 1992 № 2403–XII. – Accessed by : // http://zakon1.rada.gov.ua

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Downloaded from SWorld. Terms of Use http://www.sworld.com.ua/index.php/ru/e-journal/about-journal/terms-of-use

30.On the foreign economic activity : law of Ukraine from 16 April 1991 № 959–XII. – Accessed by : // http://zakon1.rada.gov.ua

31.On the Concept of the new Constitution of Ukraine : : resolution of the Presidium of Verkhovna Rada of the Ukrainian SSR from 19 June 1991 № 1213–XII. – Accessed by : // http://zakon1.rada.gov.ua

32.On main directions of the foreign policy of Ukraine : resolution of Verkhovna Rada of Ukraine from 2 July 1993 № 3360–XII. – Accessed by : // http://zakon1.rada.gov.ua

33.On the order on entry into force of the Law of Ukraine "On the state borber of Ukraine" : resolution of Verkhovna Rada of Ukraine from 4 November 1991 № 1778–XII. – Accessed by : // http://zakon1.rada.gov.ua

34.On the order on entry into force of the Law of the Ukrainian SSR "On the foreign economic activity" : resolution of Verkhovna Rada of the Ukrainian SSR from 16 April 1991 № 960–XII. – Accessed by : // http://zakon1.rada.gov.ua

35.On the ratification of the Agreement founding the Commonwealth of Independent States : the resolution of of Verkhovna Rada of Ukraine from 10 December 1991 № 1958–XII. – Accessed by : // http://zakon1.rada.gov.ua

36.On the realization of the Declaration on the state sovereignty of Ukraine in the relations with soviet republics : resolution of Verkhovna Rada of the Ukrainian SSR from 31 October 1990 № 425–XII. – Accessed by : // http://zakon1.rada.gov.ua

37.On the realization of the Declaration on the state sovereignty of Ukraine in foreign affairs from 25 December 1990 № 581–XII. – Accessed by : // http://zakon1.rada.gov.ua

38.On the membership of Ukraine in the European Bank of Reconstruction and Development : decree of the President of Ukraine from 14 July 1992 № 379–92. – Accessed by : // http://zakon1.rada.gov.ua

39.Ukraine in the modern geopolitical space : theoretical and practical aspects / ed. by F. Rudych. – Kyiv : IAPM, 2002. – 488 p.

40.TsDAVOVU. F. 5233. Op. 1. Spr. 434. Ark. 87–99.

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Downloaded from SWorld. Terms of Use http://www.sworld.com.ua/index.php/ru/e-journal/about-journal/terms-of-use

41.Chernyk, P. P. Geopolitical localization of Ukraine if Central Eastern Europe : avtoref. of PhD thesis in Political Sciences : 23.00.04 “Political problems of international systems and global development”. – Lviv, 2008. – 19 p.

42.Shmalenko, Yu. I. Geopolitical priorities of Ukraine in the modern world : PhD thesis in Political Sciences : 23.00.04. – Odessa, 2002. – 187 p.

43.Shcherbak, Yu. Ukraine : a challenge and a choice. Ukraine prospects in the globalized world of the XXI century. – Kyiv : Duh and Litera, 2003. – 578 p.

44.Brzezinski Zb. Ukraine’s Critical Role in the Post-Soviet Space / Zb. Brzezinski // Ukraine in the World : Studies in the International Relations and Security Structure of a Newly Independent State. – Cambridge, 1998. – P. 3–8.

45. Larrabee S. Ukraine’s Place in European and Regional Security / S. Larrabee // Ukraine in the World : Studies in the International Relations and Security Structure of a Newly Independent State. – Cambridge, 1998. – P. 249–267.

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SOVIET STATE AND RELIGIOUS ASSOCIATIONS DURING UNLEASHING OF ANTIRELIGIOUS CAMPAIGN (OCTOBER 1958 – MARCH 1961)

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The paper studies the problems of the evolution of the state and confessional relations system in the beginning of the antireligious campaign during Khrushchev’s thaw. On the basis of the summarizing of the Soviet cult legislation application practice the authors substantiate the conclusion that spontaneity element in antireligious campaign can be explained by two factors: transformation of the local organs of power in active subjects of the state and confessional relations system and loss by the union center of the initiative in law making activities.

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Key words: antireligious campaign, state and confessional relations system, local organs of state power, Council on the Affairs of Russian Orthodox Church (ROC), Council on the Affairs of Religious Cults, religious association.

The Decree of the Central Committee of the Communist Party of the Soviet Union (CC CPSU) as of November 10, 1954 having taken off the pressure in state and confessional relations could guarantee the stability in the state and religious relations as the Decree of the CC CPSU as of July 7, 1954 was not abolished and formally it was in force. The decisions of the 20th CPSU Congress (1956) changed the balance of forces in the party and state apparatuses in favor of the hard liners in relations with religion. Potential threat for religious associations became the course for "reestablishment of socialist legality" carried out in the context of the critics of I. Stalin's personality, which inevitably led to the revision of the "Stalinist" law on cults.

The beginning of the revision of the existing system of state and confessional relations was laid by the note "On drawbacks in scientific and atheist propaganda" worked out by the Department on Propaganda and Agitation of the CC CPSU in Soviet Republics by the spring of 1958. The note drew special attention to the inconsistency of interpretation as disowned of the CC CPSU Decree as of July 7, 1954 by the Decree as of November 10 of the same year. For the first time they criticized the activities of the Council on the Affairs of the Russian Orthodox Church and the Council on the Affairs of Religious Cults (further on - Councils) and their plenipotentiary representatives for their bad functioning [5, p.3]. Based on the Note, on October 4, 1958 the CC CPSU adopted a secret decree "On Drawbacks in Scientific and Atheist Propaganda". Actually it became a political decision on massive attack against the Church in all spheres and directly oriented to support the measures of educational character by administrative actions [1, p.3].

A new impetus to the antireligious campaign was given by the decree of the CC CPSU as of January 13, 1960 "On Measures on the Liquidation of the Clergy's Violations of the Soviet Legislation on Cults". The decree and adopted on its basis resolutions of the bureaus of krai committees and regional committees of the CPSU

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informed party and soviet organs on the facts, that “the clergy and sectarians” are trying to resist the measures “on the improvement of scientific and atheist propaganda among population”, break the limits of the religious activities and try to use the church and sects in the interests hostile to the Soviet people. The cause of this is the weakening control on the part of the state organs over the activities of the clergy and religious associations, which provides for them to violate Soviet laws and strengthens their influence on the population [7, p. 21-23].

State policy in relation to religions associations and the clergy, new vision of the role of the local organs of power in the system of state and confessional relations, envisaged by the decree of the CC CPSU as January 13, 1960 were juridically formalized at the All-Union level by the secret decree of the Council of ministers of the USSR “On Strengthening Control over Implementation of the Law on Cults”. This was the first after war All-Union normative act addressed directly not only to the Soviets but to local organs of state power as well (the draft decree was in different wording “On Strengthening Control on the Part of Local Soviet Organs over the Implementation of the Legislation on Cults”) [2, p.1]. Its preamble stated all controversy and peculiar result of the evolution of the state and confessional relations of the period under study. On the one hand, the preamble state the weakening of the control on the part of the local organs of state power on the implementation by the clergy and religious associations of the law on cults. The legislator believed it unacceptable in new conditions to “minimize” the competences of the local organs of state power, which existed in the after war system of the state and confessional relations. On the other hand, the preamble acknowledged the facts of the violation of the Soviet legislation on cults by the local organs of state power themselves.

The decree consists of 8 articles, three of which are dedicated to the broadening of the rights of the local organs of power. The latter were assigned the responsibility to ensure strict control over the implementation of the legislation on cults and timely take necessary measures on the liquidation of its violations by the clergy and religious associations; ensure for all citizens “freedom of consciousness”, escape illegal deregistration of religious associations, closure of churches and meeting

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houses and abuse of believers' feelings (article 1). The main in importance was article 2. It stated that registration and deregistration of religious associations, opening and closing of meeting houses of all cults should be carried out by the decisions of the executive committees of the oblast (krai) Soviets agreed with the Councils on the Affairs of ROC and the Affairs of religious cults. Local organs of state power in agreement with the Soviets were also given the right to make decisions on the limitation of bell ringing " if it was caused by the necessity and supported by the population" (article 7).

In the context of "following the general line of the party and state in relation to religion" the decree entrusted the Soviets to provide the ministries, departments and local organs of Soviet power with explanations on the questions concerning the application of the legislation on cults (article 3).

The legislator continued the line on economic undermining of religious associations. By its normative act the government extended the list of the clergy, who were subject to the income tax according to the tariffs for non-cooperated craftsmen and included in the list bishops, senior presbyters and other heads of the religious centers, who received income from the work in the management bodies as well as the teachers of the spiritual educational institutions. On equal terms with the clergy they obliged to pay income tax the singers of the church choirs, regents and organ players (article 5). Before the said decree all enumerated above people paid equal income tax with workers and office workers. The legislator determined a new object of taxation – treatment allowances, which were tax free before. According to the new rule only those treatment allowances were free from taxation, which were given once a year and their sum didn't exceed the monthly income of the clergyman; and for persons over 60 this sum was bimonthly income (article 6), [4, p.25-27].

Thorough study of the said normative act makes it possible for us to agree with the majority of the researchers on its general antireligious directionality although there is no basis to share the point of view of T. Chumachenko, who stated that by a special article the Council of the Ministers of the USSR pointed out to the necessity of reestablishing the rights of the executive organs of church communes in the part f

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carrying out financial and business activities in accordance with the Soviet law on cults [8, p.220]. The similar statement was earlier included in the decree of the CC CPSU as of January 13, 1960 in connection to all cults. By April 1961 the only unchanged act was “Provision on the Governance of Russian Orthodox Church”, which was pronounced on April 18, 1961 by the Chairperson of the Council on the Affairs of Religious Cults at the All-Union meeting of the plenipotentiary persons [3, p.20].

The decree of the Council of Ministers of the USSR as of March 16, 1961 became a direct result of the political course in relation to religious associations envisaged in the decree of the CC CPSU as of October 1958, which determined considerable transformation of state and confessional relations.

During the period under study the state changed its priorities in relation to religion from the pragmatic policy of using the potential of religious associations to reach its goals for strict limitation of the activities of religious institutions and acknowledging religion as “reactionary ideology”. This was a return to the theoretical postulates of the pre-war times and open ignoring of the positive experience of the interaction between the secular state and confessions during the war and post-war years. Such a drastic change of the content and character of the state and confessional relations can be explained by the fact that the main trend in their development was still determined not by the legal component but by the political one.

The system of the state and confessional relations itself remained unchanged preserving all its levels of interrelations between the organs of the state power and religious associations. But in comparison with the previous period local organs of the state power, which considerably increased their lawmaking activity, have become full subjects of the said relations. In September 1960 the Ministry of Justice of the RSFSR in its letter once again confirmed the right of the executive committees of the oblast Soviets to adopt necessary rulings with the view of prohibiting the activities of the unregistered religious associations. They envisaged administrative responsibility for the persons, who provided room for “gatherings and holding religious meetings”, as “the oblast executive committee were assigned the obligations to implement on

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their territories the existing legislation on religious cults" (6, 21). Their new status was completely formalized in the norms of the decree of the Council of the Ministers of the USSR as of March 16, 1961.

Without denying the facts of the violation by the clergy and religious organizations of the Soviet legislation on cults one can state that these were the local state organs of power, which to a great extent not only provided for the escalation of antireligious campaign as they were the least prepared to work in this sphere thus constantly introducing the elements of the troubled waters in it. The trend was permanently gathering pace while the competences of the local organs of the state power grew and the role of the Soviets was diminished to "implementation of the general line of the party and state in respect of religion".

During the period under study the USSR Government lost the initiative in the lawmaking activities. The party norm was not only ahead of the law norm as the adoption of the legal act of the government was always preceded by the decree of the CC CPSU, but in many cases it became the norm of direct action.

Almost 30 years later the Council of Ministers of the USSR issued a number of law acts directed at narrowing the scope of activities of religious associations. Their analysis make it possible to conditionally single out two stages of the starting period of antireligious campaign. The first stage was October 1958 – January 1960. It content was made by the attempts of the legislator to undermine economic position of religious associations. The second stage was January 1960 – March 1961, a full revision of the Stalinist legislation on cults.

The decrees of the Council of ministers of the USSR, first of all that of March 16, 1961 introduced considerable changes in the Soviet legislation on cults, initiated the solution of its main problem – systemizing at the All-Union level.

References:

1. Aleksejev V.A., «Storm of the skies» is given up? Critical sketches on the history of religion fighting in the USSR. - M.: Rossiya molodaya, 1992. – 304 p.

2. Excerpt from minutes № 3 of the sitting of the Council on the Affairs of

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Religious Cults with the Council of Ministers of the USSR as of January 23, 1961. // State archive of the Kursk Oblast (further on – GAKO). - F. P 5200. - Op. 1. - Ed. chr. 79. - L. 1.

3. On the strengthening of control over the observance of the legislature on cults. Report of the Chairperson of the Council on the Affairs of Religious Cults with the Council of Ministers of the USSR Puzin A.A. at the All-Union meeting of the plenipotentiary representatives of the Council as of April 18, 1961. // State archive of the Belgorod Oblast. - F. P 1179. - Op. 3. - Ed. chr. 22. - L. 1 - 47.

4. On the strengthening of control over the observance of the legislature on cults. Decree of the Council of Ministers of the USSR № 263 as of March 16, 1961. // GAKO. - F. P 5200. - Op. 3. - Ed. chr. 23. - L. 25 - 27.

5. Odintsov M. Purgatory. 1954 – 1960s // Nauka i religia. - 1991. - №7. - P.2-3.

6. Letter of the Ministry of Justice of RSFSR to the Executive Committee of the Stalingrad Oblast Soviet № 126-64 as of September 14, 1960. //GAKO. - F. P 5200. - Op. 3. - Ed. chr. 8. - L. 21.

7. Minutes of the Bureau of the Belgorod Regional Committee of the CPSU № 6 as of March 28, 1960. // Documentation Center of the Newest History of the Belgorod Oblast. - F. 1. - Op. 1. - D. 759. - L. 21 - 23.

8. Chumachenko T.A., State, Orthodox Church, Believers. 1941 – 1961. – M.: AIRO – XX, 1999. – 248 p.

J21318-019

Zaitseva I., Shabalina E.

ON EMERGENCE OF THE IDEA OF THE GLOBAL STATE IN ANCIENT WORLD

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The paper dwells on the attempts to develop the idea of the global state in the countries of the Ancient World (Greece, Rome, India, China) as the basis for the creation of the united geopolitical space. Besides this, the paper reflects the idea on

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the transformation of the said ideas in the real political shape in the form of the harmonious states and military and political unions.

Key words: globalization, geopolitics, the idea of the global state, Ancient World.

The development of the modern world with its political "winds" and prerequisites regard as of paramount importance such notion as "globalization". It is often believed that this is rather young category, which started to spread in the 20th century. In part, this is true as exactly since the period of the newest times the processes of globalization started to strengthen. To a great extent it is explained by two World wars, in particular by the World War II, the course and result of which led to the necessity of unification of a number of state in the single coalition to put military opposition to fascist regime. But, to think that this idea appeared in the scientific world only in the 20th century is rather primitive.

The first attempts to unite in the Greco-Roman world were made in connection with the development of economic and political ties. At this stage in Greece there emerged the state of Agamemnon [3].

New classical civilization in Greece developed after the period of "dark ages" led to the emergence of unification attempts. Mainly it was connected with large-scale Greek colonization, which spread to the territories of the Balkans and Asia Minor, Mediterranean and the North Black Sea region [3]. While the colonization processes were moving ahead in the said regions there emerged the trend for mixing between "Hellenes" and "barbarians" and the appearance of single cultural and later one political community.

The distinctive feature of all states of the Ancient World is their religious perception of all on-going processes. In Greece this led to the consolidation of religious and globalization processes for the emergence of the single space with single religious foundation. To such unions we can refer Delphic amphictyony, Temple and oracle of Delphic Apollo, which became the center of all social and political life of Ancient Greece [2].

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Besides cultural and religious globalization the states of the Ancient World witnessed a rather active attempt to create a single political and military union, ready to actively withstand external enemies. In this respect the 5-4th centuries B.C. are characterized by the emergence of a large political union at the initiative of Athens – Athenian Sea Union. Being the largest polis of the classical epoch Athens attempted to strengthen its positions and reach more stability. On the other hand, a number of small Ionic polises were seeking unification with Athens in order to strengthen their positions inside a large state. The dual nature of such attempt was in the fact that Athens made a mistake in its goals hoping that small polises, which joined its composition, would be fully dependent on it and lose their independence. Proceeding from this fact one can say that the said attempt to create a single state was a failure due to excessive ambitions of the leading polis, which was unable to foresee the implications of the absorption of smaller states.

The leading researcher of the globalization processes in the Ancient World E. Frolov believes that “there were other initiatives as well, other examples of globalization attempts, which represented odd combination of unification endeavors of autonomous polises and state and monarchic impulse. We mean the emergence in the late classical epoch of such state and territorial unities as Pherae and Thessalonian state of Jason and Sicilian state of Dionysus” [3]. Such unions in general didn’t exist for historically long time due to the fact that by their essence the unification trends were here very weak and the only goal of such processes was endeavor of a stronger polis to assimilate a weaker one.

Unconditionally, an important attempt in political unification was the state of Alexander the Great in Macedonia. Despite the fact that after his death the state ceased its existence, the very emergence of the said state became the first example for later state unifications in the Mediterranean region in particular in the Roman Empire.

If we make a certain analogy of the globalization processes of Ancient Greece and Ancient Near East we can come to the conclusion that in the second case compared to the first one, geopolitical thought was not developed enough. Like in Greece oriental thought on the unification attempts was to a great extent developed

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on the basis of the religious world outlook, the essence of which was in the fact that any attempt of political unification was one of the forms of the possible reign of this or that leader. Kautilya's Artchashastra (4th century B.C.), the most ancient source of Ancient India, says that there exist six main forms of the external policy: the state of war, war, neutrality, preparation for campaign, union and double politics [1]. All of them, one way or another, can lead to a new globalization union, either with the help of force or thanks to mutual agreement. We should note that in India practically there were no attempts to unification characteristic of Greece.

The example of globalization attempts in China was based on the mythological and ethical world outlook. In the foundation the laid two possibilities for unification – direct and indirect. The direct way was military aggression, which was often used in the period of the Warring Kingdoms in China. The indirect way was the influence on the neighboring states with the help of the so called verbal communications (powerful word and authority of one emperor over another). Besides this, in order to make a successful attempt to unite it was important to use stratagems – the integrity of secret tactical techniques and tricks, which were supposed to be used creatively depending on the concrete situation [1].

Thus, in the states of the Ancient World they realized first attempts for the unification in the single political space. But, to a great extent, all of them were formal in character as their goal was not the creation of a powerful state with unified economic and political system but the desire of one state to absorb its weaker neighbor.

References:

1. *Vasilenko I.A.* Political globalistics. – M., 2009. – 358 p.

2. *Kalina V.F.* Development of the idea of federalism and its theoretical models in the history of political and legal thought. – M., 2010. – 19 p.

3. *Frolov Э.Д.* Problems of globalization in antic world. // Mnemon: Research and publications on history of the antic world. Ed. 5. – SPb., 2006. – 26 p.

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J21318-020

Belkin L.

DEFECTS IN THE DRAFT LAW AS A FACTOR IMPROPER LEGAL REGULATION AND THEIR CLASSIFICATION

Консалтингова фірма «Аналітик», Донецька область, Україна

The article is dedicated to the analysis of the draft laws, proposed by the legislative body, causing the consequent breach of legacy and the supremacy of law. The classification of draft laws' defects was suggested, as well as the analysis of their peculiarities. The abovementioned conclusions are practicable on the stage of law making control.

Particularly, the investigation of legislative drafting activities' defects from the point of view of securing the observance of law provided us with the opportunity to distinguish the following law making defects: non-constitutional norms in the draft laws; norms which are potentially corruptive in the draft laws; draft norms with abundant blanket rules; draft laws which contain conflict rules; draft laws which destroy the preceding positive achievements; draft laws that include unfounded enlargement of authorities' power without the adequate counterbalance (legal asymmetry); draft laws which do not conform to the principle of reasonableness; enactment of laws with the violation of functioning order; avoidance of the legal regulation in spheres, where the regulation should be legally accomplished.

System analysis of the circumstances, under which legislative acts with non-constitutional norms were adopted, attests to the fact that the Government of Ukraine directly initiated 17 legislative acts, which were later declared unconstitutional (in their first part). Taking into consideration the fact that the corresponding norms of these statutes, as a rule, violated human rights of the majority of people, the governmental law drafting history cannot be accepted as satisfactory. The systematic character of the drafting and adoption of legislative acts, that contain non-constitutional norms, in due time was established by the Constitutional Court of Ukraine (e.g., the decision from 09.07.2007 # 6-rp/2007).

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The most dangerous corruptive factor is the ability of authorities to have discretion power – the right to act (adopt laws) at discretion. The European Court of Human Rights repeatedly figured out this defect of Ukrainian lawmaking.

The abuse or incorrect implementation of blanket norms cause the following negative consequences: a) direction to non-existing norms, which do not exclude the opportunity to use the right appertaining to them, or forces to exert oneself to fulfill this opportunity; b) the reference rules admit the possibility for directing to the departmental lawmaking, where negative factors are even more abundant (as a result of decreasing the level of legal regulation); c) the complication of blanket norms implementation.

The major danger of conflict rules is legal ambiguity, which usually, despite the principles of supremacy of law, is interpreted in favour of authorities, though the situation should be the contrary.

Draft laws, which destroy the previous positive achievements, are the revenge of officials for "inconvenient" norms, approved before. The possibility of implementation for such draft laws is connected with larger lobbying opportunities of officials in comparison with the civil society. The examples of rollbacks from the previous achievements were studied: ruining the formerly unified system of licensing; ruining the unified system of the authoritative subjects' regulatory activities control. Ruining the unified system of licensing consists in taking the legal norms that establish the procedure of licensing of the certain kinds of economic activities out of the operation of the statute of Ukraine "On the licensing of the certain kinds of economic activities"; as well as stretching these norms on the range of private acts, practically – on the delegated legislation, as the given private laws contain numerous blanket references to the acts, mentioned in the part of licensing. Herewith, there are no impartial criteria for taking the certain types of economic activities out of the operation of the statute of Ukraine "On the licensing of the certain types of economic activities".

In the whole system of legislative acts the rights of executive authorities are growing much faster than their duties, as well as the rights of individuals and legal

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entities (legal asymmetry). Such an approach to the law drafting and law making aggravates the condition of non-authoritative subjects, private entrepreneurs in particular, in their relationship with the subjects of authoritative power, creating additional background for pressure on business and obtaining the corruptive rent. In this case legal regulation in the corresponding sphere is not improved in any way.

The draft laws which have nothing to do with the principle of reasonableness do not formally contravene the written legal norms, but still create irrational obstacles for the addressees of the passed acts, which could be avoided without any harm for the essence of legal regulation.

The enactment of laws with the breach of active order impairs the conditions of adaptation to the changes for the direct addressees.

Avoidance of the legal regulation of the spheres, where it should be accomplished by laws, allows the officials to control these spheres arbitrary without fear that this can possibly cause the infringement of the law. The striking example is the “behaviour” of the State Commission on Securities and Stock Market in 2007-2010, when, despite the direct instruction of the President's decree, the draft law on the restrictions in the registration of securities’ issue was not even prepared. However, the Commission controlled this sphere according to the principle “everything for friends, but for enemies – our legislative act”, which was judged illegal in court. The government’s avoidance of the preparation of draft laws on the counteraction to illegal takeovers, despite the repeated claims of the President of Ukraine

J21318-021

Kudrina I.I., Butrim A.V.

PROBLEM ISSUES OF LEGAL LIABILITY FOR OFFENCES IN THE SPHERE OF AGRICULTURAL WASTE TREATMENT

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In this paper the issues of legal liability for offences in the sphere of agricultural waste treatment are studied, in particular, this subject`s researching applicability is determined, corresponding legislation is briefly analized, basic problems of legal regulation of liability for offences in the sphere of agricultural waste treatment, incuding ones, occuring in transborder cooperation, are defined, and the ways of their solving are submitted.

Key words: legal liability, offences, agricultural waste, transborder cooperation, agricultural waste treatment program.

The problem issues of legal liability for offences in the sphere of agricultural waste treatment are left open for today. So, L.O. Bondar asks in logic manner: «why, despite stormy development of domestic legislation about waste, situation in this branch of knowledge is not getting better? To our mind, significant defect of valid waste legislation lays in imperfection of mechanism of legal liability for it`s violation» [10].

According to article 42 of the Law of Ukraine «About waste» persons, guilty of breaches of legislation in the sphere of agricultural waste treatment, are subject to disciplinarian, administrative, civil or criminal liability for: 1) breaches of waste treatment established order, that resulted in natural environment contamination, direct or indirect harmful influence to people`s health and economic losses; 2) obstinate allocation or removal of waste; 3) breaches of order of import to Ukraine, export and transit through its territory of waste, as secondary materials; 4) non-fulfillment of directions and instructions, that provide state control and supervision over operations of waste treatment and places of its removal 5) concealment, distortion or refusal from granting of full and authentic information on requests of officials, citizens and their associations, regarding the safety of waste formation and their treatment, including those about accidental emissions and corresponding consequences; 6) hiding of exceeding of established limits for volumes of waste formation and allocation; 7) mixing or burial of waste, for which appropriate utilization technology exists in Ukraine, without special license of authorized body: 8) breaches of rules of

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keeping primary records and control over waste treatment operations: 9) breaches of forwarding terms and accounting order concerning waste formation, usage, neutralization and removal; 10) untimely payment making for waste allocation.

Enterprises, institutions, organizations, citizens of Ukraine, and also stateless persons, foreign legal entities are obliged to compensate losses, caused by them because of waste legislation offences, according to order and volumes, established by ukrainian legislation, first of all the civil Code of Ukraine.

On the basis of section VIII of the Law of Ukraine «About waste», in regard to offences in this sphere, that originate on the territory of Ukraine, material and procedural regulations, in particular, Economic code [2], Land code [4], Water code [1], Criminal code [7], Economic-procedural code [3], Civil-procedural code [8], Administrative legal proceedings code [5], Code about administrative offences e.t.c.

Herewith, more complex is the issue of defining the legal liability for offences in the sphere of agricultural waste treatment during transborder cooperation. So, the basic law in this field, in particular the Law of Ukraine «About transborder cooperation» [9], doesn`t set any types of liability at all, what, in our opinion, is the defect. In its turn, in the Law of Ukraine «About waste» it is also pointed out that international agreements of Ukraine could provide another order of dispute consideration concerning transborder waste transporting.

International law doctrine and international relations practice contain prevailing idea, that nature and amount of measures, concerning liability for offences in the sphere of agricultural waste treatment, have to be proportional to committed offences, herewith not only direct amount of caused losses, but also nature and matter of right infringement have to be considered. The usage of such counter-measures always has limited nature and is being realized with the aim to encourage offender`s fulfillment of his duties, including those, emerging from relations of international-legal liability.

In modern law there is the whole raw of obligations, pausing or stopping of which are not being permitted, in manner of applying counter-measures to offender. Among them there are obligations to stay away from force usage or force threat, obligations protect main human rights, obligations of humanitarian nature and other

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ones, that arise from imperative regulations of common international law.

So, A.L. Chernyavskiy, after analysis of international agreements, concerning the liability for water contamination by waste and practice of states, international courts in this sphere, makes conclusion about subsidiary nature of international-legal liability of state for such contamination.

Subsidiary nature of liability means that state has to compensate that part of losses, caused by contamination, which left not refunded after realization of civil-legal liability of legal entities and natural persons, that are under jurisdiction of state and whose actions directly led to contamination. In case if such subjects, owing to regulations of international law and national legislation are relieved of legal liability, losses have to be fully compensated by state [13, p. 10-11].

Thus, in our opinion, the Law of Ukraine «About transborder cooperation» should be added by Section IV-I with article 14-1 of such content:

«Article 14-1. Liability in the sphere of transborder cooperation.

For breaches in the sphere of transborder cooperation the parties have to bear liability proportionally to committed offence, herewith, not only direct amount of losses, but also the nature and matter of affected right should be considered.

The state has to compensate that part of losses, which left not refunded after realization of civil-legal liability of legal entities and natural persons, that are under jurisdiction of state and whose actions directly led to contamination. In case if such subjects, owing to regulations of international law and national legislation are relieved of legal liability, losses have to be fully compensated by state».

In connection to this, part 2 of article 44 of the Law of Ukraine «About waste», accordingly, should be stated in following edition: “Disputes, originated because of transborder waste transportation, are resolved adjusted for regulations of the Law of Ukraine «About transborder cooperation». Another order of considering disputes related to transborder waste transportation could be provided by international agreements of Ukraine”.

Also, according to researchers` opinion, the unification of legal mode of all waste types, that in fact creates unified grounds for emerging of legal liability for

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corresponding offences, despite different nature of formation and existing particularity of treatment with different waste categories, could be considered as the demerit of legislation. So, the need for establishing of different legal modes for different types of waste: domestic, industrial, dangerous, agricultural, e.t.c.[11].

What concerns agricultural waste, it could be reasonable to adopt special legal regulations, first of all the law about special program of dealing with agricultural waste.

On the basis of this program, secondary legislative acts in the sphere of agricultural waste treatment, in particular rules of exploitation of objects, dealing with agricultural waste, order of conducting the competition for providing services on removal and utilization of agricultural waste, methods of separate gathering of agricultural waste, exploitation rules of agricultural waste ranges, e.t.c., should be enacted.

References:

1. Водний кодекс України від 6 червня 1995 року // Відомості Верховної Ради України. – 1995. – № 24. – Ст. 189.

2. Господарський кодекс України від 16 січня 2003 року // Відомості Верховної Ради України. – 2003. – № 18, № 19-20, № 21-22. – Ст. 144.

3. Господарський процесуальний кодекс України від 6 листопада 1991 року // Відомості Верховної Ради України. – 1992. – № 6. – Ст. 56.

4. Земельний кодекс України від 25 жовтня 2001 року // Відомості Верховної Ради України. – 2002. – № 3-4. – Ст. 27.

5. Кодекс адміністративного судочинства України від 6 липня 2005 року // Відомості Верховної Ради України. – 2005. – № 35-36, № 37. – Ст. 446.

6. Кодекс України про адміністративні правопорушення від 7 грудня 1984 року // Відомості Верховної Ради Української РСР. – 1984. – Додаток до № 51. – Ст. 1122.

7. Кримінальний кодекс України від 5 квітня 2001 року // Відомості Верховної Ради України. – 2001. – № 25-26. – Ст. 131.

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Downloaded from SWorld. Terms of Use http://www.sworld.com.ua/index.php/ru/e-journal/about-journal/terms-of-use

8. Цивільний процесуальний кодекс України від 18 березня 2004 року // Відомості Верховної Ради України. – 2004. – № 40-41, 42. – Ст. 492.

9. Про транскордонне співробітництво: Закон України від 24 червня 2004 року № 1861-IV // Відомості Верховної Ради України. – 2004. – № 45. – Ст. 499.

10. Бондар Л.О. Поняття відходів за законодавством України / Л.О. Бондар // Екологічне право: [Електронний ресурс]. – Режим доступу: http://ecopravo.host-ua.org.ua/nauk/ecobezpeka/vidhod.htm.

11. Бондар Л.О. Правове регулювання охорони довкілля в сільському господарстві / Л.О. Бондар // Екологічне право: [Електронний ресурс]. – Режим доступу: http://ecopravo.host-ua.org.ua/nauk/ecobezpeka/agroeco.htm.

12. Чернявський А.Л. Критерії правомірності застосування контрзаходів у міжнародному праві / А.Л. Чернявський // Правовий вісник Української академії банківської справи. – 2008. – № 1 (1): [Електронний ресурс]. – Режим доступу: http://www.nbuv.gov.ua/portal/Soc_Gum/Pvuabs/texts/2008_1/1.5.1.pdf.

13. Чернявський А.Л. Міжнародно-правова відповідальність за забруднення поверхневих вод: автореф. дис. на здобуття наук. ступеня канд. юрид. наук: спец. 12.00.11 / А.Л. Чернявський; Ін-т держави і права ім. В.М. Корецького НАН України. – К., 2008. – С. 10-11.

J21318-022

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RULE OF LAW STATUS OF INSURANCE ORGANIZATIONS ON THE LAW OF THE RUSSIAN FEDERATION

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In this paper the basic legal requirements for insurance companies as business entities

Key words: insurance organization, insurer, legal entity

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In modern scientific works fairly investigated in detail the peculiarities of the legal status of different subjects of entrepreneurial (economic) activities[5]. No less relevant is the study and specific legal characteristics of such entity of entrepreneurial activity as an insurance organization.

In the Russian scientific literature along with the term «insurance company» uses the term «insurance company», which is identical to it in its content. This replacement is generally accepted and reflected in the foreign insurance. Under the insurance organizations means the circle of the subjects of private (non-state) insurance, act as insurers, that is, take upon themselves the obligation to compensate the policyholder losses upon occurrence of the insured event[4].

In Russian legislation in relation to the notion of «insurance company» has not yet developed a common definition of. The legislator operates two categories: «insurance company» and «insurer» - which are used interchangeably. Civil code of the Russian Federation[1], having a priority value when regulating the issues of legal status of Russian insurance companies, article 927 establishes that insurance is performed on the basis of contracts of property or personal insurance, concluded by a citizen or legal person (the insured) with an insurance organization (insurer). However, further examination of the insurance legislation ensures that the insurance organization - a notion which is an integral part of the broader category of insurance law - the insurer, that is an umbrella term in relation to the insurance companies and societies of mutual insurance[2].

In the national legislation establishes certain requirements that must be met by the entities claiming to be called the insurance organizations. First, it is a provision, according to which the insurance organization may only be a legal entity. This is because the only entities able to meet the regulatory requirements of insurers, as well as provide the necessary degree of reliability, which allows one to reach the goals, set by insurance purposes. Secondly, it demands directly connected with the specificity of insurance activity. These include the exclusive competence, specialization of insurance companies, legal regulation of the issues of creation and activity of insurance organizations of special legislative act, the obligation of the state

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registration, compulsory licensing by type of activity and prohibition of the combination with other activities, special requirements to the size of the authorized capital, the need to create a reserve fund, compliance with ratios of the company's assets and liabilities, the requirements for the financial condition and business reputation of the insurance organization and other.

Neither the Civil code nor the Law «On organization of insurance business in the Russian Federation do not contain a direct indication in any organizational-legal form shall be established by the insurance organization and refers to the commercial or non-profit organizations. Because insurance, carried out by the conclusion of contracts between the insured and insurers, as a rule, is for insurers business activities, we should recognize that insurance companies must be established in the forms provided for commercial organizations. Analysis of designs for commercial organizations shows that it is preferable for the insurance companies are forms of business companies. It has been argued that this is also indicated by the requirements of the legislation on the minimum Charter capital of insurance companies [3]. In addition, historically developed forms of organization of the insurance companies were joint-stock companies.

Thus, taking into account all of the above symptoms of an insurance organization can offer to enshrine in law the definition of this concept in the following form: this is a legal entity of any legal form, created in accordance with the Russian legislation for the implementation of activities in the sphere of insurance and receiving the appropriate permission to perform this type of activity.

Besides, the Law «On organization of insurance business in the Russian Federation it is expedient to introduce limitations to the legal form of insurance organizations operating on a commercial basis. Mandatory form for them, you should install a closed or open joint-stock company.

References:

1. The Civil Code of the Russian Federation (part one) dated 30.11.1994 g № 51-FL (updated 23.07.2013 g.) // Collection of Laws of the Russian Federation. – 1994. – № 32. – Art. 3301.

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2. On Insurance in the Russian Federation: the Law of the Russian Federation of 27.11.1992, the № 4015-1 (in the red. From 23.07.2013 g) / / Vedomosti SND and the Armed Forces. - 1993. - № 2. - Art. 56.

3. Petrov D.A. Insurance Law: Textbook. allowance. - St. Petersburg., 2000.

4. Encyclopedia of the market: Quinquelingual multivolume dictionary catalog / Ed. EV Bandini, etc. - M., 1994. - T. 1.

5. Yakovlev V.I. Regulatory and legal enforcement in the securities market in Russia: the Dissertation for the degree of Candidate of Sciences. - M., 1998; Poberezhnaya I. Yu. Civil-law regulation of reinsurance: dissertation for the degree of Candidate of Sciences. - M., 2010 and other.

J21318-023

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ORGANIZATION AND LEGAL REGULATION OF DOMESTIC PRE-REVOLUTIONARY PENSION (THE CASE OF PENSION OFFICE OF PEOPLE'S TEACHERS AND TEACHER)

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In this paper, an example of the pension fund school-teachers and teachers devoted to the problem of the evolution of organizational and legal mechanism for domestic pension during the period of 1827-1917 years.

Key words: pensions, organization, regulation, pension fund.

We offer the study of the process of the genesis and development of organizational and legal mechanism of pre-revolutionary Russian pension system through the prism of public participation in it [1] detail the organizational and legal elements of the pension fund school-teachers and teachers.

In accordance with the approved June 12, 1900 the Charter of the pension fund school-teachers and teachers [2], 1 January 1901 in the Russian Empire opened

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pension fund school-teachers and teachers. Charter pension fund school-teachers and teachers [2] consists of five chapters: the first chapter, "General Terms", the second chapter, "On the participants of the pension fund", the third chapter "On the cash funds", composed in turn were separated first "About income funds "and the separation of the second" On the distribution of funds between participants and cash funds ", chapter Four" On pensions, and the return of contributions ", chapter Five "On the production of affairs offices".

Based on the rules of the first chapter of the Charter [2], the pension fund school-teachers and teachers had to provide cash leaves the service members and their families regardless of the pensions of those who put them on the basis of general laws and other statutes, and His Majesty's orders. In the second chapter of the Charter [2] established a circle of persons entitled to participate in the pension fund, with the division of mandatory and voluntary participation began. First branch of the third chapter of the Charter [2] was devoted to the revenue sources of the pension fund. Of its rules implied that the funds of the pension fund were: mandatory deductions from the participants, benefits from the treasury or from other sources referred to in the Charter, income from capital owned by the box office and property, donations, as well as the amount bequeathed in favor of cash, and the occasional admission. Second branch of the third chapter of the Charter [2] contain rules on the allocation of funds between participants and cash funds, according to which the right of the participant or his wife on the amounts received for them at the cash register, certify the record of these amounts on their personal accounts and measured the amount of annual revenue, taking into account interest accrued on the basis of a special table, approved by the Minister of National Education in consultation with the Minister of Finance and the State Audit, and published to the public in due course. The amount of these revenues, together with interest, was called the modern value of the rights. Chapter IV of the Charter [2] contains detailed rules for establishing the right to a pension, the pension calculation, its benefits, termination and resumption of payment of pension, the rules of the return of contributions erroneously received by the pension fund. The right to receive a pension from the fund school-teachers and

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teachers enjoyed by the participants themselves and their families. Article 28 of the Constitution [2] defines a family member offices entitled to receive a pension from the fund. The right to receive a pension from the fund school-teachers and teachers enjoyed by the participants themselves and their families. Article 28 of the Constitution [2] defines a family member offices entitled to receive a pension from the fund. No one could receive under the present Charter of the two pensions, paid only one, large in size. The amount of pension participants is determined by multiplying the current value of the acquired rights of the participants in the age-appropriate party for a pension, the factor specified in the special tables. Individuals who have left the service, being able to work, subject to their participation in the box office at least 15 years were eligible for ordinary retirement. Recognized unable to work the person that is "subjected to serious illness and injury, sickness or injury not only deprived them of the opportunity to continue the service, but also to live by their work" [2], provided their participation in the box office for at least five years, had the right to on enhanced pension. Participants who have acquired the right to a pension, to exercise this right while in retirement and during the state of the service without content. Chapter V of the Charter [2] deals with the rules of operation of the pension fund and monitor its activities.

From 1 July 1900 the Department of National Education was established the Office of the pension insurance fund. From the Treasury every year since January 1, 1901, made provision for the production of pension fund benefits from the Treasury to strengthen the contributions of its members at the rate of six percent of their content and the cost of managing the affairs of the pension fund [2].

The participants of the pension fund school-teachers and teachers have made it a monthly 6% of their salary. For each required participant as much cash should make treasury or district council, or town, or a private person. Money is distributed among the participants, their wives, orphans and emergency fund in case of shortage of cash, and accumulated on the personal account of a participant fund. These funds are the source of the pension which was administered on the basis of the probable duration of his life, is determined by the special tables of mortality. This method of establishing

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pension insurance was called because, pension popular teacher was dependent on his salary, the amount of prosluzhennyh years and the age of the participant fund. Because of the small size of the salary, and as a consequence - the size of pensions, in order to increase the latter, some zemstva performed additional appropriations, and became convinced of the need to transition to a whole-of-way or emeritalnomu pensions of their employees [3].

On the whole, summing up the study of the above legal act, it is important to note that in the Russian Empire to the beginning of the XX century. objective conditions are ripe for the transition from indirect care of the state in the form of charity for the disabled, the elderly, widows and orphans to state the legal regulation of pension schemes mentioned categories of the population. The legal basis for such a transition was already incorporated in the investigated legal act of direct regulation of pension relations with the state.

References:

1. Levshuk M.V. The genesis of the institutional mechanism pensions in Russia in XIX - early XX century. / / Scientific Statement BSU. Ser. Philosophy. Sociology. The right. , 2011. Number 8 (103). MY. 16. S. 138-152; Levshuk M.V. The formation of the legal basis of pre-revolutionary state pensions / / Scientific Statement BSU. Ser. Philosophy. Sociology. The right. , 2011. Number 14 (109). MY. 17. S. 125-138.

2. Charter pension fund school-teachers and teachers [Text]: approved. opinion of the State. Council of 12 June 1900 number 18877 / / Complete Collection of Laws of the Russian Empire: Works. third, to 33 tons - St. Petersburg., 1885-1916. - T. XX, Dep. I: 1900. From 17968-19504 and additions. - St. Petersburg., 1902. - S. 812-821.

3. Lubchenco D.E. pension funds, school-teachers and teachers - M: Type. t-va Sytin, 1913. - 222.

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SOME FEATURES OF MAKING A REINSURANCE CONTRACT

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In this paper we consider the features of making reinsurance contract as well as the bases of its modification and termination.

Key words: reinsurance contract, clauses, legal standards.

Undoubtedly development and agreement the main terms of the contract is an important point of making any contract. It is well known that the Russian civil law as well as international agreements and other rules of international law not clearly established conditions that need to be spelled out in the text of the reinsurance contract. However, the long-standing practice of reinsurance in our country has developed the most acceptable variants of reinsurance contracts. One version of contract contains comprehensive information about the formal conditions of the contract. Another version of the reinsurance contract contains the most general terms of the proposed transaction. Also should not be forgotten about clauses that are a feature of the reinsurance institute and can be traced in all the texts of reinsurance contracts. Also, do not forget about the items that are a feature of the Institute of reinsurance and are in all the texts of reinsurance contracts.

As an example consider the most common version of the reinsurance contract. The contract preamble contains a full and abbreviated name of the contract subjects, an indication of their status (the reinsurer and the reinsurer) and legal address. The following is mention of the contract subject: marked obligations of the parties, volume of reinsurer share in coverage for damage cedant, permission the insurer to use the services of other reinsurance companies; documented formal legal rules regulating the procedure mutual settlements between the parties; the reinsurer right to control the insurer documents relating to the performance of this contract; dispute settlement procedure; contractual time; liability of the parties as well as the text of the

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contract contains a number of clauses that are required in this specific case. For the reinsurance contract is characteristically the presence of appendices. Appendices contains a list of the insurance and risks types included in this contract, the reinsurance methods, the risk allocation methods, the maximum liability of the reinsurer, etc.

In the reinsurance contract is fully implemented the principle of freedom of contract, which provides the following capabilities:

1. freedom to make contracts (except when the obligation to make contract is pursuant to the law or voluntarily accepted obligation (such as obligatory reinsurance contract - approx. author));
2. making any contract (due to the existence of multiple reinsurance forms there is no unequivocal text of the contract, there is a tentative list of requirements that are specified in the contract text);
3. freedom of the parties to determine the contractual terms (in a reinsurance contract may be added conditions that are characteristic for these subjects and in their interests).

Also in reinsurance contracts, for example, obligatory, can be fixed obligatory grounds for early termination of the contract, videlicet:

- impossibility of execution de jure and de facto;
- inability of one of the contract party to repay the debt to creditors, its bankruptcy or liquidation, or withdrawal of authority or license for conducting business;
- the loss of one of the parties of all paid-up capital or part thereof;
- pass under the control of another juridical person or the State;
- if the country where is situated or registered other party has been fighting against any other party with or without a declaration of war; partially or completely occupied by another state.

Discharge of an insurance contract also is possible unilaterally “under waiving to give written consent by insurer to cedent for reduce the volume of net retention, ..., or in the absence of a written response of reinsurer to a notice of cedent within 10

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days of receiving notice". [1]

Thus, after considering the procedure for concluding the contract of reinsurance, we came to the following conclusion:

When conclusion and operation of reinsurance contract the parties may refer to international contracts, national law, business practices. However as the analysis of the international contacts and agreements a clear mechanism for the settlement of these relations in them are not provided, that allows us to make a conclusion on Russian legislation application in cooperation with foreign reinsurers legalized in Russia, the reinsurer willing to place their risks in national reinsurance companies, as well as the application of the foreign legislation in the case of transferring reassurance of risks to reinsures of this State. Business practice that evolved throughout the history of the reinsurance Institute play an important role in reaching out between the parties of reinsurance contract.

References:

1. Dedikov S.V. Property insurance contracts: civil aspect. Teacher edition in 2 volumes.// Moscow, Reglament. – 2007. – Volume 1. – 328 p.

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LEGAL PROBLEMS OF COMMERCIALIZATION OF R&D RESULTS IN UKRAINE

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The present report studies the problems of commercialization of R&D results and the possible ways of their overcoming reflected in the current legislation of Ukraine in line with the trends of developed OECD countries, in particular through the elucidation of public private partnership mechanisms.

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Key words: scientific results, applied scientific results, intellectual property objects, technologies, technology transfer, innovation, public-private partnership

XXI century is associated with the process of economic development based on knowledge as key intangible product. The level of the country's development is determined by the efficiency of interaction of the three sectors: gathering of knowledge - science, dissemination of knowledge - education and application of knowledge in the economy - innovation. Intensity of the relations in this triangle of knowledge gives a boosts to sustained growth in national, regional and local scale. Innovativeness of economy in Ukraine is estimated at 1%. This fact is due to many problems, especially, low governmental support of domestic science, the lack of economic incentives for private investments in research activities, poor mechanisms of public-private partnerships in science and innovation. The only form of interaction between private companies and public research institutions remains the inefficient system of commercial contracts. Moreover, to date research institutions are not financially independent, they are not able to use the funds received from the implementation of these contracts even for the development of their scientific base. In the Ukrainian innovation system was formed a significant gap between the sphere of scientific research, which is mostly in the public sector, and the sphere of practical application of R&D results in the market environment. The state of research commercialization is rather low and needs considerable improvement, especially within the legal framework.

The main results of research activities according to the Law of Ukraine "About scientific and scientific and technical activity" [1] are scientific and applied results. *Scientific result* is the new knowledge obtained in the basic or applied research and recorded on carriers of scientific information in the form of report, scientific paper, scientific review, scientific report about research work, monographic studies, scientific findings and so on. *Basic research results* are the new knowledge about the laws of nature, society and human as well as their interrelations. Instruction No 306 dd. 20.08.2007 [2] regarded as basic researches' results hypotheses, theories, methods and recommendations for applied research implementation with the purpose of

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defining of opportunities of obtained scientific results' practical use, scientific publications and so on. *The result of applied researches* is the new knowledge, intended for the specific practical aim or objective. Applied researches determine possible ways of using of the results of basic researches, new methods of problems'solving defined previously.

Thus, the research results are the intangible benefits, the results of creative intellectual activity - the new knowledge, recorded on scientific and technical information's media carriers. That is not possible to equate the scientific result (new knowledge) and the tangible form of its expression (the carrier of scientific and technical information). It is important to understand that the result of the researches is not just the new knowledge, but the new scientific knowledge: scientific understanding, explanation of one or another phenomenon, its comprehension and generalization as scientific findings.

Unlike scientific results, applied results are based on the new knowledge obtained both as a result of researches (scientific knowledge) and practical experience (experiential knowledge), and are expressed in the creation of new materials, products, processes, devices, services, systems or methods. Moreover they can relate to both new objects and significant improvement of already existing objects as well as to the new methods of their use. The Law of Ukraine "About scientific and scientific and technical activities" [1] defines the *scientific and applied result* as a new design or technological solution, an experimental model, complete tasting, working, which is already implemented or can be implemented in social practice.

Research and applied result can be presented in the form of a report, sketch plan, design and technological documentation for scientific and technical products, full-scale sample, etc.. In fact, *the research and applied result* is the result of experimental design work, design and search as well as technological work and experimental development. In particular, the development of design of an engineering facility or technical system (the results of design activities), working out of ideas and options for the new facility, including non-technical ones, at drawing level or another system of symbolic tools (the results of project activities), development of

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technological processes, i.e. ways to combine physical, chemical, technological and labor processes into a coherent system that produces a certain useful result (the result of technological activities).

Some experts define the scientific and technical results as "intermediate products", which have not yet acquired the protective form. This view cannot be considered correct. The problem lies in the different field, namely that many scientific results take the form of scientific works that are protected as copyright objects, so knowledge that creates the essence of scientific works and has the priority value, in fact, does not receive adequate protection. Thereby in terms of content, for example, report on the results of scientific research is not considered to be protective. The most appropriate legal form for protection of the results of scientific and technological activities is the patent rights (for inventions, utility models, industrial designs) and other rights protected by the security documents (for topographies of integrated circuits, selection achievements).

Technological and organizational decisions on the local level of novelty may be protected as efficiency proposals, although the level of protection at the present stage of innovation development is underdeveloped. The existing mechanism of technologies' protection in the mode of commercial secret cannot be recognized as perfect. If the value of the technology (process) as an object of the invention is defined by its content, i.e. the solution of certain complex practical problem, the value of such a technology as an object of the commercial secret is determined only by the fact whether it is not commonly known and public available.

Except homogeneous objects, amid scientific and technical results should also be identified complex objects, such as technologies or uniform technologies. According to the Law of Ukraine "About state regulation of activities in technology transfer sphere" [3] (Article 1) the result of scientific and technology activities, a complex of systematic scientific knowledge, technical, organizational and other decisions concerning the nomenclature, terms, order and sequence of operations' fulfillment , production process and / or sale and storage of products as well as the provision of services is recognized as *the technology*. Technology objects include

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scientific and applied results, objects of intellectual property rights (including inventions, utility models, scientific and technical writings, software, commercial secrets) and know-how. According to the Law *the know-how* is the technical, organizational or commercial information obtained through experience and testing of a certain technology and its components, that is: not generally known or readily available on the date of agreement about technology transfer, but is essential, that is important and useful for production of goods, technological process and / or the provision of services, and that is defined, i.e. described thoroughly enough to verify its eligibility to the criteria of obscureness to the public and essentiality. So technology is presented as a combined or complex category, that includes other scientific and scientific and applied results.

Exactly the above mentioned objects have actual or potential commercial value and can be realized into new or improved products (goods or services), processes, marketing and organizational solutions in the process of innovative activities. *Innovative activities* are presented as the activities aimed at utilization and commercialization of the results of scientific R&D and condition the placing to the market of new competitive products and services. [4] The main subjects of innovative activities, on the one hand, are the representatives of knowledge generation sector, such as academic scientific institutions and organizations and higher education institutions. Most of these subjects of scientific activities are in the public sector of economy. On the other hand, the process of introduction of the results of scientific R&D in the market circulation is not possible without the other main participant – subject of business activities (usually as such appear individual and legal entities of private law). Thereby the state of innovative activities (the practical application of the scientific results) depends on the developing of the efficient relationships between these two main participants of innovative system. *The innovative system* is defined as a complex of institutions of private and public law, that individually and in collaboration condition the development and dissemination of new technologies within the state. The state itself also plays an important role in the innovative system,

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providing favorable conditions for the realization of innovations, primarily as a regulator of innovation processes.

Recently, the in the global doctrine and practice there was developed *the concept of public-private partnership (PPP)*, when the state directly or through legal entities of public law becomes literally a "partner" rather than a "catalyst" and "regulator" in the sense that provides one-way influence. That is in the innovative relations the state acts not as the subject of authority, but as an equal partner, that is ready to share the risks of innovative activities. Advantages of joint participation of the state and other public entities together with private ones in innovative processes are linked to the combination of their commercial and social component. Thus, PPP, on the one hand, may increase the commercial potential of scientific researches of public scientific institutions, and on the other hand, to encourage private companies to implement socially important projects, where investment prospects are rated as long-term and poorly predictable and risks of commercialization are estimated as significant.

At the level of the OECD countries [5, p. 91 - 92] PPP is defined *as any formal (official – note of the author) relationships or arrangements for the fixed/ unlimited period of time between public and private participants, in which both parties collaborate in the decision-making process and co-invest some limited resources, such as money, personnel, equipment and information to achieve a particular purpose in a particular field of science, technology and innovation*. The public partner is thereby represented by the government, local authorities, governmental laboratories, research institutions, state universities, state institutions, organizations and enterprises as well as associations. Amid the basic features of PPP there are pointed out: the equitable nature of the relationships and the existence of shared goals and orientations of partners, consentience of their interests, co-investment of resources (including money, property, human resources, intangible assets, equipment, intellectual property, know-how, technology, expertise, information and etc.) and the active involvement of partners in decision-making process, distribution of risks, costs and benefits in proportions according to the mutual agreement.

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One of the most common areas of partnership is a partnership between public scientific institutions and private sector companies or scientific partnership. The founder of the modern concept of PPP in innovation A.Link emphasizes that in the definition of "public-private partnerships" the emphasis should be on "partnership" [6, p. 2], as a form of relationships. He notes that this term was chosen to show the dynamics of the relationships between government and private scientific institutions, since from the beginning the first one acted as a customer of the researches until one became a partner in these researches, i.e. the evolution of the role of the public entity in partnership relations. If originally scientific partnership is used as a synonym for collaboration (cooperation) in R&D sphere, joint public-private initiatives, then later on this term is used to identify joint venture research company.

Intensification of the partnership forms of interaction in the U.S. and Western Europe took place in the 80^{s} years of XX century and has been associated with the introduction of the market paradigm in technology and innovation policy of these countries. These processes were accompanied by the adoption of a number of the legal acts: in the United States these were Bayh-Dole Act and Stevenson – Wydler Act in 1980, Cooperative Research Act in 1984, the Law about Technology Transfer (Federal Transfer Act) in 1986, the Law about national competitiveness in technology transfer (National Competitiveness Technology Transfer Act) in 1989, the Law on national research and industrial cooperation (National Cooperative Research and Production Act) in 1993, the Law about commercialization of technology transfer (Technology Transfer Commercialization Act) in 2000, and others, in France - the Law about innovation and research № 99-587 dd. 12th of July 1999.

Ukraine still lags behind the global processes of deployment of public-private partnership mechanisms. The Law of Ukraine "About the state regulation of activities in technology transfer" [3] first determined the legal, economic and organizational principles of technology transfer, created at the expense of the budget funds. The main positive achievements of this law include the procedure for transfer of property rights to such technologies. Thus, property rights to a technology and / or its components, created in the course of the scientific research and experimental design

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work were finally assigned to institutions, organizations and enterprises - performers of these types of work. Unfortunately, in 2012, from this law there were deleted specific contractual forms of technology transfer, including partnerships, and all the contracts for technology transfer were reduced to agreements on disposal of intellectual property rights, determined by the Civil Code of Ukraine.

Attention should also be drawn to the fact that the specific legislation of economic and legal nature, which regulates the activities of scientific institutions of the public sector, is developed like in parallel to the civil law and inconsistent with the latter. Thus, the decree of CMU (Cabinet of Ministers of Ukraine) dd. 28.07.2003 № 1180 "About approval of the list of the paid services that can be provided by budgetary scientific institutions" as well as the Procedure and conditions for the provision of paid services to budgetary scientific institutions, approved by the decree of the Ministry of Education № 798/657/351 dd. 01.12.2203, in spite of the Civil Code of Ukraine include scientific research, experimental design, design, technology, search and retrieval activities and services into the services performed under the contract for providing paid services, which determines the order of services' provision as well as the amount and terms of payment for these services.

The budget legislation, in its turn, blocks the rules of Art. 5 of the Law of Ukraine "About the peculiarities of the legal regime of activities of the National Academy of Sciences of Ukraine, specialized academies of sciences and the status of their property complex", which provides the academic scientific institutions the right to dispose independently the income and other earnings received from the provision of paid services permitted by the law. Currently, in accordance with the paragraph 10 Art. 29 of the Budget Code the own revenues of budgetary institutions (including scientific institutes of the National Academy of Sciences of Ukraine and specialized academies) held by the state budget, belong to the sources of the special fund of the State Budget of Ukraine. Moreover the right to manage the funds of the budgetary institutions was submitted to the State Treasury, and starting from 2011 – to its successor - the State Treasury Service of Ukraine.

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Public research institutions are also deprived of the right to create a corporate form of partnership with private individuals. First, p.3 Art.86 of the Commercial Code of Ukraine does not allow the use of budget funds as a contribution to the authorized (share) capital of a business entity. Second, the Law of Ukraine "About the State Property Management" deprives public scientific institutions and organizations (non-owners) to manage corporate rights independently. In fact, the only form of partnership collaboration is science parks, which status as legal entities of civil law has not yet been determined. At the moment in Parliament there was introduced a bill, that allows scientific institutions to act as founders of business entities, but its future fate is unknown.

All the above mentioned deficiencies demonstrate the current state of scientific and innovative activities, which is not conducive to the implementation of technological potential of the country. To improve the situation the following steps are necessary:

- increaing of funding efficiency of scientific and innovation sector;
- development of the mechanisms of public private partnership in this sector;
- provision to public scientific institutions the legally established opportunity to manage independently the intellectual property rights for the results of scientific R&D, particularly as contributions to the charter capital of business entities;
- introduction of modern European standards in the scientific and innovation sector;
- alignment of specific regulations about science and technology and innovative activities with the civil law.

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