ISSN 2227-6920

Research Bulletin SWorld

Modern scientific research and their practical application

Published by:

Kupriyenko SV *on* ***Project SWorld***

With the support of:

ODESSA NATIONAL MARITIME UNIVERSITY

UKRAINIAN NATIONAL ACADEMY OF RAILWAY TRANSPORT

INSTITUTE FOR ENTREPRENEURSHIP AND MOREHOZYAYSTVA

LUGANSK STATE MEDICAL UNIVERSITY

KHARKIV MEDICAL ACADEMY OF POSTGRADUATE EDUCATION

MOSCOW STATE UNIVERSITY OF RAILWAY ENGINEERING

Volume J21418

November 2014

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Please use the following format to cite material from this book (*italics indicate the fields to change to your data*):

Author(s), 'Title of Paper," in Modern scientific research and their practical application, edited by Shibaev Alexandr, Markova Alexandra. Vol.J21418 (Kupriyenko SV, Odessa, 2014) – URL: http://www.sworld.com.ua/e-journal/j21418.pdf (date:...) - *page* - *Article CID Number*.

This volume contains research papers of scientists in the field of Legal and political science.

Published by:
Kupriyenko SV
on ***Project SWorld***
Telephone: +380667901205
e-mail: orgcom@sworld.com.ua
site: www.sworld.com.ua

Paper Numbering: Papers are published as they are submitted and meet publication criteria. A unique, consistent, permanent citation identifier (CID) number is assigned to each article at the time of the first publication.

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Yarovenko V.V., Polechuk O.V.

VIDEO SURVEILLANCE SYSTEMS AND DIGITAL VIDEO RECORDERS AS SOURCES OF INFORMATION ABOUT EVENT

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The report considers the procedural regulation of the information from video surveillance systems and digital video recorders. The authors are also of the view that changes in the criminal procedure and administrative legislation will make it possible to consider the forensic information as evidence in the case. Another positive aspect is the introduction in the new CODE of CRIMINAL PROCEDURE of the investigative action - "Getting information from surveillance systems, video recorders".

Key words: forensics, information, investigations, criminal procedure, fixation, video surveillance systems, DVR

Currently there is a constant need to address a variety of investigative tasks with help of the methods of crime investigation in the information-analytical support by expanding the sources of forensically important information using both existing various technical devices and new devices, which are invented due to the scientific and technical progress; that contributes to the formation of new investigative actions (186 and 186¹ of the CCP) [1]. In this context, of particular interest are technical devices of accumulation and transfer of information, based on digital technologies, quality and quantity of which are increasing from one year to another, that helps to the informational support of investigative activities [2, p. 47].

It is worth mentioning that according to VJ Stelmach, the term "information" is not appropriate for determination of the subject of the investigative action, he proposes to replace it with the term "statement" [1]. This proposal raises a number of objections.

Firstly, it is controversial contention that the term "information" is not used in the criminal procedural law. If to accept this proposal, there is a need to change not only § 24 ¹ art. 5 of the CCP, but also paragraph 12, part 2 of art. 29 of the CCP. Furthermore, the term "information" is used in the art. 272, 273, 274 of the Criminal Code.

Secondly, this innovation is not appropriate, given that the legislator also uses the term "results" along with the terms "information", "statement" (art. 89 of the CCP).

Thirdly, the concrete solutions to the problem of information and analytical support of investigative activities are being created nowadays.

The modern ways of getting information are such devices as digital video recorders (DVRs) and surveillance cameras, the number of which is constantly growing, because they allow to record technically qualitatively and objectively the situation, incident. We have already mentioned that the increase in the number of video surveillance cameras, DVRs leads to the fact that law enforcement authorities

use more frequently recorded information for the analysis of the situation of the incident, comparison of the testimonies of the people involved in the accident, production of forensic examinations. As the result, there is inevitable violation of law [3].

This raises a legitimate question about procedural status of the received information from surveillance systems, video recorders and about analyzing this information. This problem can be solved by introducing a new investigative action - "Getting information from video surveillance systems, digital video recorders". We propose the following wording of the investigative action: «If there is sufficient evidence, it is probable that the information from video surveillance, DVRs and other devices, which are installed in public transport and in other places, is significant for the investigation of the criminal case. It is allowed to obtain this information by the investigator on the basis of the investigator. This statement can be fixed in the CCP in the article 186^2 "Getting information from the video surveillance systems, video recorders" [4, p.18]. The adoption of article 183^2 of the CCP will be an implementation within the framework of investigative action of the information, which is obtained from video surveillance systems.

It is to be noted that the issue about procedural consolidation of the results of applying the DVRs is more actively discussed in administrative law. Thus, according to the p. 2 of art. 26.7 of the Administrative Code the materials of photography and filming, sound and video recordings, data bases and data banks and other electronic data carriers are classified as documents. The text affirms that video record from DVR is an evidence. However, practitioners, basing on personal beliefs, do not take it into account, because there is no direct instruction in the law.

The fact that Russian courts do not always attach to the case the video recordings have been discussed for many times. In particular, the coordinator of the "Blue buckets" Petr Shkumatov noted that due to the lack of attention to recordings made on DVRs many violators of the traffic rules remain unpunished, which adversely affects the road safety. The traffic police is also not against raising the status of recordings made on DVRs.

A similar position has been adopted by LDPR deputies Igor Lebedev, Jaroslav Nilov and Andrei Svintsov, which proposed a change in the Part 2 of art. 26.7 "Documents" of the Code of Administrative Offences (CAO). Today this law theoretically allows to use DVRs, but according to the Liberal Democrats the existing wording is too ambiguous and allows the court to find reason for the refusal of the admission of video in the case file. They proposed to change only one sentence in the law: the words "may be related" is replaced by "are related". In this case, the disposition of this regulation will be expressed in a particular categorical form. The regulation will have a special legal force. These changes will allow to use this regulation clearer and they will allow to prevent ambiguities, "- is said in the explanatory note of the authors of the document.

However, the deputies of the "Edinaya Rossiya", which are led by a professional committee of the Duma on Constitutional Legislation and nation building, withdrew the document without voting during the first reading. The position of the deputies of the "Edinaya Rossiya" is reflected in the negative conclusion on the bill, which they

gave on March 11 on behalf of the professional committee. Information about law enforcement practice, that would indicate that the present regulation preclude attribution of the materials of photography and filming, sound and video recordings, data bases and data banks and other electronic data carriers to the documents, which may be an evidence in cases of administrative offenses, is not provided. Thus, the authors' proposal under consideration of the bill lacks sufficient grounds ", - is stated in the review.

The government of the Russian Federation has approved a controversial bill on acceptance of records from DVRs as the evidence in administrative cases. Authors of the bill stated that they would introduce it into the Duma again in the nearest future and expect ultimate success.

Adding to the evidence list of records from DVRs is the first step towards the possibility of procedural regulation of use of the surveillance video systems and digital video recorders, which contribute to the objective establishment of circumstances among administrative cases. This list must be considered by the court. We believe that the emergence of a new investigative action in the criminal law would also contribute to the development and improvement of the system of investigation to obtain previously unknown information, which is essential to establish the circumstances of the incident.

List of references:

1. Стельмах В.Ю. Получение информации о соединениях между абонентами и (или) абонентскими устройствами как следственное действие: автореф. дис... канд. юрид. наук. Екатеринбург, 2013. С. 28. // Авторефераты диссертации по юридическим наукам. Сайт «Правовые технологии». URL: http://www.lawtech.ru/document/2013avtoref1646 (дата обращения: 18.05..2014).

2. Яровенко В.В. Технико-криминалистическое обеспечение фиксации хода и результатов следственного действия // Сборник научных трудов SWorld. – Выпуск 3. Том 32. – Одесса: КУПРИЕНКО С.В, 2013. – С.47.

3. Полещук О.В., Яровенко В.В. Получение информации с систем видеонаблюдения и видеорегистраторов // Современные проблемы и пути их решения в науке, транспорте, производстве и образовании 2013". – Одесса: КУПРИЕНКО, 2013.

4. Полещук О.В., Мефодьев А. Ю. Предпосылки возникновения нового следственного действия: «Получение информации с систем видеонаблюдения, видеорегистраторов» // Сборник научных трудов SWorld. Материалы международной научно-практической конференции «Современные направления теоретических и прикладных исследований ‘2013». – Том 28. – Одесса: КУПРИЕНКО, 2013. – С.18.

J21418-002

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PHILOSOPHY OF CRIMINAL LAW

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The report considers issues about punishment, who or what it serves in reality and what purposes it is intended to serve. Given that the criminal punishment is the reaction of the State within the requirements of criminal law (philosophy of punishment), it is foremost logical to consider law in general. The authors are of the opinion that morality was and still is the criterion of "timely" intervention or enactment of the law, including criminal law, because it namely is the "lower limit" of morality.

Key words: philosophy law, morality, crime, punishment, imposition of the sanction

1.1. Modern problems of philosophy of criminal law. In recent years, there has been a new wave of interest to the problems of philosophy and law, including criminal law, which should answer the question about nature of criminal law. Philosophy of crime and philosophy of punishment are intended to determine penalties. Improving the optimal combination of twin categories is one of the ways to harmonize the criminal law (punishment and encouragement). In existing criminal law, the encouragement is a full-fledged institution of impact on behavior along with the punishment. One of the perfect forms of alternative criminal prosecution is the mediation – the conciliation of victim and offender through an intermediary. This institution has been actively developed in criminal law and legislation as basis to strengthen private basics in criminal law, as a new exemption from criminal liability for crimes committed in the economic sphere (art. 76 [1] of the Criminal Code) [1].

In a sense, we are talking about the search for compromise in criminal law and criminal justice in general. Morality and criminal law - the source of disputes, disagreements and misunderstandings [2, p. 6-52]. In recent years, embodied ideas are increasingly analyzed in the legal and political literature, so to say, which are materialized in penal provisions. It seems to be quite appropriate to delve into the philosophical (or as our opponents say - parascientific) reflections on criminal punishment at all. Thought should be given again to the question what the punishment is. Who or what does it serve in reality? What purposes is it intended to serve?

Certainly, punishment and its purpose are located in the focus of public eye of politicians, exposed to moral sanation by descendants and contemporaries. There is a philistine and political interest to punishment (both interests are often bad); also there is a professional interest [3, p. 136]. This is understandable since so widespread negative phenomenon as crime can be countered only by a large-scale activity of state agencies in order to combat and prevent crime. This activity should have a common approach and strategy, in other words the policy.

After adopting the Federal Law № 162-FZ of December 8, 2003 the legislator refused to use the form of multiplicity of crimes such as recidivism. At the

same time, it was noted as an explanation for modernization that criminal act now is characterized in accordance with cumulative offenses, and therefore a blameworthiness is increasing. In fact, such a legislative solution to the problem has pushed the highest court of the country to its identification with complex (lasting) crimes, such as causing the death of two or more people [4].

There was no less paradoxical situation in the beginning when the confiscation of property was abolished. After that it was reactivated, but in a different capacity [5]. We think that this is an example of thinly veiled lobbying in the criminal law.

1.2. Since the criminal punishment is the reaction of the state within the requirements of criminal law (philosophy of punishment), it would be logical to realize once again what right is in general. It is clear that it is the "will of the state, reflected in law," or "a set of norms, which are governing social relations," etc. However, since there are other regulators of relations in society besides the rights (for example: morality, political ideology, religion, etc.), there is a need for a quite clear understanding of the role and tasks of law, as a system of state norms. It seems that this viewpoint is reflected in the following definition of Russian philosopher V.S. Soloviev: "The right is a lower limit, some minimum of morality, which is mandatory for all people." [6, p. 26-27]. There is a more detailed description: «*Right is the compulsory requirement to implement a certain minimum of welfare or such regime, which prevents known extreme manifestations of evil*» [7, p. 35].

But if the right is the "lower limit" of morality, on this basis, criminal punishment can be understood as a certain barrier that separates the lowest moral human behavior from its complete fall, when the crime is committed, and at the same time it establishes some compensation for illicit contravention of moral principles. Compensation for society and/or person against whom an immoral crime was committed. Not all scientists share the position that the criminal law is subordinate to public morality [8, p. 257-275]. However, much as we desire it, morality was and still is a criterion of "timely" intervention or enactment of the law, including criminal law, because it namely is the "lower limit" of morality.

To avoid arbitrariness of interpersonal relationships, which can make "lower limit" more "lower", this limit is raised to the rank of the law by the state. To give a stability and sense of protection to society, it is guaranteed in the case of infringements of the right to privacy that a certain minimum will still be restored. Such a guarantee, of course, can be given only with help of a specific authority, which stands *above* all the members of a particular society. Such authority usually is the state, represented by their law enforcement agencies.

That is why the concept about the step that goes *beyond* the "lower limit" (crime) implies that the punishment is an expression of the special relationship that exists between those who committed the act and the state. From the standpoint of criminal, the punishment is thus a consequence of the committed acts; from the standpoint of the state the punishment is a measure taken because of the committed acts [9, p. 5].

To restore the broken peace, of course, it would be logical if the measure taken by the state in relation to the criminal due to the committed crime or overstep beyond

"lower limit" of morality will allow to restore the broken peace maximally to its original state. However, this fact does not exist, and can hardly exist, for example, in case of injury or deprivation of life, etc. Therefore, the state or society, according to the dominant morality, assesses the degree of recovery of the lost. Thus, depending on the coincidence of assessment of losses in the law and in the minds of members of society we can talk about the degree of approximation to the satisfaction/dissatisfaction by undertaken measures. It is important in the approach to the development of penal system and in the implementation of criminal policy [10, p. 133].

Hegel once considered a violation of law, which is concerned only with external actual existence or possession, as an evil, damage to some kind ownership or property; and removal of violations as damage was defined by Hegel as civil satisfaction in the form of compensation to the extent which was possible at all. Already in this aspect of satisfaction, if the harm is the destruction and generally could not be restored, instead of the qualitative specific nature of the damage there should be general nature as value [11, p. 145].

In Hegel's view, crime is not a positive action, to which punishment is as a denial of it. Crime is the denial of the right. Hegel regards crime as the original, independent of the punishment, concept that is determined not by features of its blameworthiness, but by objectively inherent attributes. This is the first violence, denial of the right (in our opinion - the step beyond the edge of "lower limit"). Therefore, punishment is the negation of negation. [12, p. 146-147].

In this case, according to Hegel`s opinion, crime is prosecuted and punished not as "crimina publica", but as "privata" (e.g., theft and robbery among the ancient Jews and the Romans, and now some of the crimes among the British, etc.), to some extent punishment still retains nature of revenge [11, p. 151].

According to English law theorist M. Freeman, "legal standards is a mirror of society. Society of proprietors will determine social deviation in accordance with its concept of ownership, and religious society will be stigmatizing a particular behavior as heresy... It is inevitable that powerful groups will succeed in securing the law that they consider legitimate, and will ban such laws, which they do not approve "[10, p. 134]. Social grading scale of individual acts, the criteria of such scale are directly determined by the system of social values of society.

There is an opinion that "the range of social values is various enough." It includes the moral and ethical values, ideological (political) in some systems - religious, national ethical, economic, aesthetic values, etc. In turn, and we share this point of view, values are directly related to social ideals. Values - "are not what people pay for, but are what people live for". Therefore, social values play a role of "criterion of choice between alternative courses of action" [10, p. 134]. It is necessary to add that the social values or social ideals are becoming such a "criterion of choice between alternative courses of action" not only for criminal who decided to overstep an edge established by law, but also for judicial bodies, who impose sentences for crimes, and not in the least - for legislators.

Further, punishment is established to stop criminal who overstepped the "lower limit" of morality and to stop such criminal activity. There is a danger that it may

become his usual, besides timely and proper punishment contributes to simultaneous prevention of further crimes committed, not only by criminal, but also by other persons who might be tempted to commit certain crimes in case of abandonment of such unpunished activities [13, p. 134]. Here, however, we should not forget that crime in general is not a foreign object in the body of society, and it is the result of a specific deformation of its characteristics and its relationships and rebirth, just as in the case with cancer of live organism [14, p. 134]. The removal of the liver affected by cancer can kill a human. Therefore, in the case with punishment, when even the most active fight against crime is held, society must provide the essential interests of the people. That is why we must keep in mind respect for the basic human rights even in the sentencing process. In addition, the criminal law is neither the only, nor even main, a decisive factor in resolving the problem of eradication of crime. It is known that the task of combating crime should be solved on the basis of spiritual, cultural level and consciousness of citizens and on the basis of increase in their material security [15, p. 134]. Moving away from the conclusion, which is pushing us to aspiration to "humanize" the criminal law, we need to note the correlation between changes in crime and line of application of punishment. Does this aspiration have a common sense? Therefore, if there is no alarming alterations in the crime structure such as increasing number of serious crimes, there is no need to strengthen the punishment. If on the other hand the number of serious crimes is not really reducing, jurisprudence and legislative practice cannot be oriented on the application of the lighter penalty [16, p. 55]. This position has been criticized, because adverse changes in the crime structure and increase in the number of serious crimes may occur, for example, by reducing the latent crime and improving performance in solving crimes. In other words, it is clear that the response to a formal deterioration in the structure of crime in the form of punishment would be meaningless. Currently we do not see any improvements in solving crimes and reduction of latent crime. On the contrary, "a significant part of practitioners from investigation and inquiry agencies are confident that the introduction of the new Code of Criminal Procedure has reduced crime detection" [17, p. 5].

If you ask yourself the question of the appropriateness and necessity of humanization of criminal law, the answer probably would be so: «On the whole, the concept of humanization of the criminal law is a very positive and deserves support. However, in our opinion, the nature of individual crimes and the specific situation in the country should be taken into account». According to society, the implementation of humanization of criminal law (both to the process of criminalization and penalization) is appropriate and necessary. This is due to the fact that the state, which abandons the policy of *training* of personnel suitable for Russia, and switches to *education* policy, has no moral right to punish its citizens, who are grown up in an environment, where more and more spread opinion that the crime (from the standpoint of religion and moral - sin) is the norm. On the other hand, this approach does not mean that we should forget about the goals and tasks of the criminal law. One of the goals of the criminal law, as it is known, is crime prevention. Among other things, this goal is achieved through intimidation, which helps to prevent even intention of infringement.

With regard to humanization, it should be noted, like many social phenomena, this process also has two sides: humanization in relation to the offender, and humanization in relation to the victim. Generally speaking, victims of genocide, which is carried out within the framework of existing legislation, including the criminal law, are the entire Russian people. Further, considering conscious movement toward "humanization" due to the consequences of the illegitimate privatization of Russia, the fact of providing the guarantee of impunity of genocide related to the "privatization" by using such humanization is obvious. In particular, the elimination of such punishment as confiscation, considering the overt robbery of Russian resources, looks like not as conniving thieves, but obviously more than that - as a control of this process.

1.3. By banning dangerous and establishing a system of penalties criminal law, which is mediated and indirect form of recognition and protection of social benefits, provides the maximum possible level of freedom, corresponding to the needs and interests of society. The concept of "protection of social values" is rarely disclosed in the legal literature and is associated with the concept of "criminal law repression" or easier with the "practice of sentencing." This sometimes excludes understanding of reality; it means that the criminal law protection of social values or in other words the problem of criminal law necessarily entails the application of such measures [18, p. 5]. Given the fact that crime situation in Russia is becoming more unfavorable, "fight against crime" should remain in the policy of crime prevention of the Russian State.

There is no wide explanation of the growth of repression in contemporary Russian society compared to the pre-revolutionary society. Opinion about the specifics of the Russian attitude to law, about compassion of the people sharply contrasts with permanent measures to strengthen penalties [19, p. 5]. Norm-formation in criminal law is possible only by changing sanctions in already existing article of the special part of the Criminal Code towards strengthening or weakening of responsibility and maintaining permanence of the corpus delicti – primary qualified, privileged.

There is the term "penalization" in the theory of criminal law, which is understood as establishment of criminal penalties for offenses. It could be stated that in these situations only the power (intensity) of penalization of certain acts is substantially changing. On March 7, 2011, the Federal Law № 26-FZ of the Russian Federation "On Amendments to the Criminal Code of the Russian Federation" took effect, which abolished the lower limit of sanctions Part 1, 2, 3, 4 article 111 of the Criminal Code [20, p. 5]. Probably the interval between the lower and upper limits of the criminal penalties should be reduced for many crimes. However, the abolition of lower limit could be approved in those cases of serious crimes, when the "interval" between the lower and upper limits of sanctions is negligible (e.g., no more than 2-3 years of imprisonment). In the other cases, it will contradict the principle of legality and individualization of penalties and, of course, will not help to reduce serious crimes [21, p. 5].

Removal of the lower limits of sanctions in Article 111 of the Criminal Code cannot solve the problem [22, p. 5]. Elimination of the lower limits of punishment in form of imprisonment violates the principle of the equality of individuals before the

law. For example, two people committed the same serious crimes. Exploiting the legitimate requirement of individualization of criminal responsibility, the judge has the right at his discretion to punish one of the perpetrators to the fullest extent of the law, and the other for the crime of small or medium-gravity. Even if to believe in crystal honesty and integrity of the judiciary, existence of such an incredibly wide limits of sentencing are unacceptable precisely because of the violation of principle of equality - a pillar of true liberalism.

Therefore, any persons committing crimes of the same severity should be punished by equal (in nature and content) penal consequences for each of the perpetrators (naturally within the framework of sanction in the article of the Special Part, or with equal possibility to use other criminal legal response). Otherwise, there will always be people who are "more" and "less" equal before the law in society. We can only guess what can cause the "official" acknowledgement of the inequality at the moment of the verdict. Certainly, expanding the limits of judicial discretion to legal anarchy will not add the credibility to judiciary in the eyes of population. During the discussion of the law on the abolition of the lower limits of sanctions was assumed that serious or extremely serious crimes would not be affected. However, such changes have taken effect and have affected sanctions of Article 111 of the Criminal Code. Now murderer (just for murder, because prosecutors are reinsuring themselves, and in many cases murder qualifies under Part 4 Article 111 of the Criminal Code) can be convicted to negligible penalty of several months' imprisonment.

Is there a solution to this situation? According A. Kibalnik there is the solution: "punishability and limits of judicial discretion are necessary to be determined by allocation of crime to a strictly defined category of severity. In other words, if the crime is classified as serious, there should not be legal possibility to punish the perpetrator for such a crime "like" for the crime of limited or average gravity. The popular position of scientists on the individualization of criminal responsibility will not be affected: individualization will be possible within the sanctions, which are defined by category of severity. Besides, there are plenty of alternative options of prosecution measures (exemption from criminal liability or punishment, probation, sentencing below the lower limit, etc.), which has not been canceled and that are effective tools of punishment individualization and differentiation of criminal responsibility» [23, p. 5].

The abolishment of the lower limits of sanctions in Article 111 of the Criminal Code has other consequences. According to the rules of Article 10 of the Criminal Code, law, which reduces the penalty, has retroactive effect; everybody who is convicted under the reformed Criminal Code have the right to request a review of the sentence, up to minimizing the punishment, and it leads to social tensions.

It remains to find out is it necessary while derogating the lower limit remedy to reduce the prison term? For example, the new law provides the possibility of two months' imprisonment of person who has caused damage to the person’s health, which result through negligence in the death (Part 4 of Article 111 of the Criminal Code), means that there are some extraordinary, exceptional circumstances. Moreover, for the specific legal case it is an issue of law enforcement, rather than lawmaking process [24, p. 5].

Directions of modernization of criminal law include the following aspects:

1) socially oriented development of basis of criminal law, i.e. the development of the resource that allows to balance the interests of individuals and society;

2) start economizing criminal repression, which was always acknowledged in the Russian legal doctrine. It should reduce the number of repositories in prison, and at the same time, increase the effectiveness of the criminal law resource;

3) rational study of the criminal law, which should lead to enhance the regulatory impact of the criminal law.

However, there are no more or less detailed recommendations to form sanctions in the theory of criminal law. Meanwhile, legislative and law enforcement practice require to study this issue. There are such sanctions in the theory of criminal law: absolutely certain sanctions, relatively-defined, alternative and cumulative.

Relatively-defined sanction is applied in the case when not only quantitative but also qualitative characteristics of crimes have a great importance (the degree of guilt, seriousness of the consequences), which allows to concretize measure of influence depending on the circumstances. Accordingly, the relatively-defined sanctions is the sanctions in which each penalty is graded, i.e. its lower and (or) higher limits.

However, there is a very serious and complex problem – the permissible limits or range of relatively-defined sanctions. It should be noted that, in general, current legislation is characterized by rather broad framework of sanctions. Thus, the interval between the minimum and maximum dimensions of sentence of liberty deprivation under Part 1 Article 111 of the Criminal Code is up to 8 years, under Part 2 up to10 years, under Part 3 of Article 111 up to 12 years, and under article 111 Part 4 variation of punishment is up to 15 years.

According to L.A. Prokhorov, the existing criminal law sanctions have relatively broad scope and creates a legal basis for individualization of punishment. It allows the court to take into account the specific circumstances of the crime, social and psychological characteristics of the individual [25, p. 5].

According to I.V. Polikarpova, "establishing too broad scope of the sanctions is not a good precondition for further individualization of criminal responsibility, and it leads to hypertrophy and judicial arbitrariness. Broad scope of sanctions defines the punishment inaccurately, that contradicts the constitutional provision on the definition of the crime and punishment» [26, p. 5]. It is clear that even consideration of all circumstances of the case and the individual cannot ensure the unity of law enforcement. Therefore, forming rules of criminal sanctions, which are mandatory for legislators, need to be developed and implemented [27, p. 5], which would exclude a big difference between the minimum and maximum measure of punishment prescribed for the offense. Optimal difference in terms of imprisonment could be three or four years, then it will create the best conditions for general and special prevention of crime, and term is limited to the necessary minimum.

Sanctions types of crimes in the science of criminal law, including crimes against health, are not taken into account properly. At the same time, the study about rules of forming sanctions is essential, because they greatly define the limits of blameworthiness, establish a framework of judicial discretion, limits of consideration of circumstances of the case when sentencing and determine the measure of their

influence on the chosen punishment. Depending on the design of sanctions, the choice of legislator between the types of opportunity of court to individualize the punishment increases or decreases, respectively, and becoming more extensive or, conversely, more narrow. The Federal Law № 26-FZ "On Amendments to the Criminal Code of the Russian Federation", which took force on March 7, 2011, abolished the lower limit of sanctions to imprisonment in 68 elements of crimes, including serious or extremely serious crimes and crimes such as intentional infliction of harm to health... Indeed, the reduction of "interval" between the lower and upper limits of criminal penalties for many crimes is a positive thing. However, perhaps, this fact is true only in the case when education is aimed at public usefulness of personality and education is at the proper level.

A.P. Kozlov noted that strengthening of sanctions is performed from minimum to maximum, primarily, depending on varying degree of the predominating trait. The varying degree emerge, when one or another sign of the type of crime can be differentiated within the minimum and maximum [28, p. 5].

The question arises: what should be the optimum limits between minimum and maximum sanctions? We believe that the optimal difference in terms of imprisonment could be three or four years. It will create the best conditions for general and special prevention of crime, and its measure is limited to the necessary minimum.

In our opinion, we can formulate the following general rules of forming sanctions:

a) sanction must correspond to the degree of social danger of crime;

b) degree of concretization or generalization degree of criminal offense should be taken into account in law. The more concretely possible consequences are outlined in the disposition of the article, the smaller should be the range of fluctuation of limits of punishment, and vice versa;

c) sanction of the criminal law should be optimal, i.e., its content and measure should mostly contribute to the goals of punishment and should completely meet the requirements of the principle of repression.

References:

1. О внесении изменений в Уголовный кодекс Российской Федерации и отдельные законодательные акты Российской Федерации. Федеральный закон №420-ФЗ от 7 декабря 2011 г.// Собрание законодательства РФ. 2011. №50. Ст. 7362.

2. Аликперов Х.Д. Преступность и компромисс. Баку, 1992; Философия уголовного права / Сост. ред. и вступ. статья Ю.В. Голика. – СПб.: Изд-во «Юридический центр Пресс», 2004, с.6-52.Бойко А.И. Римское и современное уголовное право. – Ростов-на-Дону, 2000, с.136.

3. Березка С. Участие главы государства в формировании уголовной политики Российской Федерации.// Уголовное право, 2003, №2. С.98-99.

4. Собрание законодательства РФ. 2003. №50. Ст.4848.

5. Собрание законодательства РФ. 2006. №31 (часть 1). Ст.3452.

6. Цит. по: Трубецкой Е.Н. Энциклопедия права. - С-Пб., 1998. с. 26-27.

7. Соловьев В.С. Право и нравственность. – Мн.: Харвест, М: АСТ, 2001, с.35.

8. Иванов А.М. Корруптология – правовая наука и учебная дисциплина: путь совершенствования уголовной политики и законодательства о воздействии на уголовную преступность и коррупцию. – Владивосток, 2002, с.257-275.

9. Таганцев Н.С. Русское уголовное право. Лекции. Часть общая. В 2 т. Т.2. – М.: Наука, 1994. с.5.

10. Аналогично рассуждают и авторы монографии: Основания уголовно-правового запрета (криминализация и декриминализация)/ Отв. Ред. В.Н. Кудрявцев, А.М. Яковлев. – М.: Наука, 1982. с.133.

11. Гегель Г.В.Ф. Философия права. – М.: Мысль, 1990, с.145.

12. Пионтковский А.А. Учение Гегеля о праве и государстве и его уголовно-правовая теория. – М.: Изд. «Юрид. лит.», 1963, с.146-147.

13. Уголовный закон. Опыт теоретического моделирования. / Отв. Ред. В.Н. Кудрявцев, С.Г. Келина. – М.: Наука, 1987, с.139.

14. Долгова А.И. Стратегические направления борьбы с преступностью// Формирование государственной политики борьбы с преступностью. Материалы конференции. – М., 1997. с.41.

15. Гальперин И.М. Свойства преступности и наказание.// Проблемы социологии уголовного права. Сборник научных трудов. – М., 1982. с.46.

16. Карпец И.И. Наказание. Социальные, правовые и криминологические проблемы. - М., 1973, с. 92.

17. Гаврилов Б. Новеллы уголовного процесса на фоне криминальной статистики.// Российская юстиция, № 10, 2003, с.5.

18. Жалинский А.Э. Уголовная политика и задачи уголовного права. // Политика и право, 2006, №6. С.4-12.; Кауфман М. Об уголовном праве в его либерально-юридическом понимании. // Уголовное право. 2005, №5. С.24-27.

19. Жалинский А. О современном состоянии уголовно-правовой науки.// Уголовное право, 2005, №1. С.21-24.

20. Российская газета, 11 марта 2011 г.

21. Наумов А. О серьезной уязвимости одного из последних законопроектов о внесении поправок в УК РФ.// Уголовное право, 2010, №1. С.38-39.

22. Червоткин А.С. Критиковать законодательство – не дело судьи.// Уголовный процесс, 2011, №12, с.19 и 2011, №9, с.24.

23. Кибальник А. К чему приведет «гуманизация» уголовного законодательства?.// Законность, 2012, №9, с.24.

24. Пикуров Н. Установление пределов действия уголовного закона во времени и с учетом межотраслевых связей.// Уголовное право, 2012, №5, с.102-104.

25. Прохоров Л.А. Общие начала назначения и предупреждения рецидивной преступности. – Омск, 1980. С.20.

26. Поликарпова И.В. Уголовная ответственность за умышленное причинение тяжкого вреда здоровью. – М., 2009. С.111.

27. Лопашенко Н.А. Российская уголовная политика: поиски истины или метод проб и ошибок? (Субъективная попытка анализа и прогноза). // Российский ежегодник уголовного права, 2007. №2. С.430-449; Федеральный закон от 7 марта 2011 г. №26-ФЗ «О внесении изменений в Уголовный кодекс Российской Федерации».

28. Козлов А.П. Уголовно-правовые санкции (проблемы построения, квалификации и измерения). – Красноярск, 1989. С.71.

J21418-003

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POLITICAL AND LEGAL PRINCIPLES OF PARLIAMENTARY GOVERNANCE IN UKRAINE

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Summary. *The article is dedicated to the analyses and development of the political and legal principles of parliamentary governance in the formation of government power and possibilities of controlling its activities, removal of gaps and contradictions in the legal regulation of the supreme legislative body's functions, jurisdiction and powers. It also considers the parliamentary governance in terms of semi-presidential republic and describes stages of development of forms of government.*

Keywords: *parliamentary government, constitution, Supreme Rada, parliament, parliamentary, political institution, society, executive agencies and democracy.*

The strengthening and development of political and legal principles of parliamentary government means the development of involvement the Supreme Rada of Ukraine in the formation of government power and possibilities of controlling its activities, removal of gaps and contradictions in the legal regulation of the supreme legislative body's functions, jurisdiction and powers. We can meet efforts in this direction virtually throughout the entire existence of the Ukrainian sovereignty, which finds its expression in the transformation of forms of government.

Professor A. Kudriachenko with certain reservations allocates the following sequence:

1) July 1990 – December 1991 – the system, most tended to a parliamentary form of government;

2) December 1991 – June 1995 – a presidential-parliamentary system of government;

3) June 1995 – June 28, 1996 – a presidential form of government;

4) June 1996 – December 2005 – a presidential-parliamentary republic;

5) since January 2006 – a parliamentary-presidential form of government;

6) since June 2010 – a presidential-parliamentary republic [1, p. 7];

7) since April 2014 we can confidently say about the revival in Ukraine of a parliamentary-presidential form of government.

The first changes of government in modern Ukraine were held under the focus of increasing the powers of parliament. However, this change was dictated by the political situation of elite’s changes in which political forces, which have come to power in times of Leonid Kuchma, wanted to stabilize their situation and ensure their interests. The transition of responsibilities in January 2006 to the Supreme Rada of Ukraine affected the weakening of presidential powers and the emergence of new independent political entity – the Prime Minister. The responsibility of the head of government to a parliamentary majority made the post of Prime Minister more significant. According O.Tolkachov, «previously, the Parliament gave consent to the appointment by the President of Prime Minister, Head of the Antimonopoly

Committee of Ukraine, Chairman of the State Committee for Television and Radio broadcasting of Ukraine, the Chairman of the State Property Fund of Ukraine, other members of the Cabinet of Ministers of Ukraine were appointed by the President independently» [3].

Changes in the balance of powers between the President and the Parliament gave a possibility to affirm that the form of government in modern Ukraine in 2004 – 2005 turned into a parliamentary-presidential. This status of a form of government was enshrined in 2006 and 2007 parliamentary elections. However, the President controlled the law-enforcement agencies, that had special significance in the transition society and was a safety tool in the context of political instability and development of national statehood.

Situational balance between the political forces, that were in power and in opposition, was enshrined in the mode of termination of powers of the Cabinet of Ministers and entry to the post of the President. Also the balance of forces was approved in the mode of bills voting.

The constitutional reform of 2004 broke the balance in the system of control and counterbalances and affected on final breakdown of the entire system of a state power, which led to a political crisis. In particular, according to this project the effect of so-called «parlamentarization» of the Executive branch of government arose and that threatened its effective functioning because of the presence of numerous powerful and functional imbalances.

Shortcomings in the distribution of powers of branches of government and the imbalance of control and counterbalances caused the political crisis in 2006 and were the reason for the publication of the presidential decree on 2 April 2007 on the termination of powers of the Supreme Rada of Ukraine of the V convocation.

On the final distribution of power and the nature of the interaction of political institutions a huge impact had less their constitutional powers than the results of the elections and the complementary nature of the political forces in the Parliament and in the Executive branch. This situation is caused by a necessity of parliamentary trust and support of a parliamentary majority, as a consequence – the dualism in the Executive branch, i.e. the double responsibility of the government to the President, the head of state, and the Parliament. Therefore, the characteristics and the dominance of the President or the Parliament depend not only on their constitutional powers, but on the political situation that has developed in the state.

When researching the semi-presidentializm it is necessary to consider the presence of the different types of the republic, each of which has its own set of institutional characteristics. So, the premier-presidential system is determined by the following criteria: a popularly elected President; giving the President authority in the formation of the government (but in the absence of legislative powers, such as veto power); the Executive power is distributed among the President, the Prime Minister and the Cabinet of Ministers, which is responsible to the Parliament.

The institutional system of a presidential-parliamentary political regime, in turn, includes the following features: a popularly elected President; giving the President a full range of powers in the formation of the government (including appointment and dismissal of members of the Cabinet of Ministers); the Cabinet of Ministers must to

gain the confidence of the Parliament; the President has the right to dissolve the Parliament.

France is a classic example of a semi-presidential republic. In this state, the President and the Parliament are elected independently of each other. The Parliament can't oust the President, who, in turn, has the right to dissolve the Parliament with the obligatory condition to schedule the date of the extraordinary parliamentary elections. The President is the Head of State and Supreme Commander and represents the country in the international arena, has the right to veto decisions of the Parliament, and the sole authority to declare a state of emergency, but during the period of its validity he loses the right to dissolve the Parliament. This is an example of internally stable European country. However, the conflict interaction between «pro-presidential» and «pro-parliamental» political forces took place in France in the 1960-ies. Therefore, this form of government is typical for transitional periods in the development of European democracies.

According to D.V. Mazur, a semi-presidential form of government characteristic of «the organization and order of distribution of higher public authority in the state in which the Executive power is carried out by the government (formed by the President with the Parliament), responsible to the Parliament (or both to the Parliament and to the President – the head of state, elected by general direct suffrage, which has real powers). Its main features are: bicephality («dual chairmanship») of the Executive power between the Head of State (the President) and the Prime Minister, who heads the government (the President is not the head of the Executive power); the reality of presidential powers; election of the President by general direct suffrage for a certain term; subordination of the government to the Parliament (or both the Parliament and the President)» [2, p. 6]. D.V. Mazur notes that the effective existence of the republic with a mixed form of government is a democratic regime.

To the republics of the mixed form of government can include Belarus, Bulgaria, Armenia, Georgia, Kazakhstan, Mongolia, Poland, Portugal, Russia, Romania, Ukraine, France.

These countries, except France and Portugal (although the last one also made in its time a successful transition from authoritarianism to democracy), are distinguished by belonging to transitive countries, whose political parties act in the conditions of sharp social stratification of the population, radicalization of public opinion and intensive foreign influence. Therefore the power of the President is a special safety mechanism to maintain stability of the new independent States in the development of statehood and variants of political practice.

Despite the importance of the stabilizing function of presidential powers, the political forces that support presidents gain a significant advantage. «It is revealed that constitutions of only four republics of the mixed form of the government (Belarus, Georgia, Kazakhstan, Russia, which are presidential-parliamentary) establish direct subordination of the acts of the government to acts of the President. In presidential-parliamentary republics the President often issue decrees on issues referred to the competence of the government, primarily economic. A large part of acts of the government is issued for execution of acts of the President, not the laws of the country», – specifies D.V. Mazur [2, p. 7].

The imbalance in the Executive authority between the President and the Parliament becomes the basis for a potential confrontation between the Head of the Government and the Head of State. Such a situation took place in the relations of L. Kuchma and L. Kravchuk in 1993 and 1994. However, in conditions of weakness of the post-Soviet political forces (from an organizational point of view and on a social basis) the powers of the main centers of power in the system of the form of government become the basis for avid competitions.

Analyzing the Institute of contrassegnation of acts of the President can establish that the Basic laws of only four mixed republics (Armenia, Belarus, Georgia, Russia) does not fix the requirement of binding acts of the President by the signatures of the Prime Minister and the Minister. This proves that the Institute of contrassegnation in the conditions of a presidential-parliamentary republic differs fundamentally from those in the conditions of a parliamentary-presidential. In a presidential-parliamentary republic, where the President has the right to terminate unilaterally the powers of the Prime Minister or the Minister, refusal to sign the act of the head of state may mean their resignation. Under such conditions the role and possibilities of the Institute of contrassegnation reduces, leading it to the formal approval of the relevant act of the President. A different role the Institute of contrassegnation plays in a parliamentary-presidential republic, where the government is appointed and resigned by the Parliament. If the parliamentary majority (and the government) does not support the political line of the President, contrassignation of acts of the President is not just a formal act, but a real will of the Prime Minister or the Minister and gives the opportunity to talk about compatible powers of the President and the Prime Minister. So, in Ukraine in the conditions of a semi-presidential republic the Prime Minister may influence the policy of the President (and under certain conditions to block his decisions) on the following issues: the appointment and dismissal of heads of diplomatic missions of Ukraine to other States and international organizations; perform item 18 of article 106 of the Constitution of Ukraine (regarding decisions of the Council of National Security and Defense of Ukraine); the introduction in Ukraine or in its certain areas of the state of emergency and announcement in case of necessity certain areas of Ukraine as zones of emergency ecological situations; creation of courts.

Thus, the possibility of confrontation between the Prime Minister and the President in the conditions of mixed republic stimulated the development of the coalition agreement between the political forces. In those countries, where there is a proportional system, even a small fraction group in the Parliament makes a political force successful, so they are able to influence government decisions and to defend the interests. An example of modern Ukraine showed that in the conditions of unstable benefits (when neither of the factions has no dominance in the legislature) even the second largest political force is able to form a coalition and a government. However, with the loss of support of the government system by the President, Ukrainian Prime Minister cannot radically improve the socio-economic situation and to get the support of the whole society.

In turn, the parliamentary government as an element of the political structure of the state is often considered through the prism of organization of the Supreme bodies

of power and identified with a parliamentary republic in which, unlike the presidential republic, the post of head of state and head of government are divided among themselves and are elected by the Parliament directly. However, it is impossible to question the significance of the Parliament in the conditions of presidential or mixed (as in Ukraine) republic.

The further establishment of parliamentary government in our country has prospects, which can be realized in conditions of development of structure of political communication, formation of ideology of the civil society, transformation of the theoretical foundations of the parliamentary reforms to an inviolable and generally accepted system of values of the citizens of Ukraine.

Internal potential of the parliamentary government is not yet fully developed in Ukraine. First of all it is about its unimplemented role in integration of population and management layers in the general network of traditions and rules of parliamentary life, consolidation of society, constructive settlement of conflicts and strengthening of political systems through community mobilization for support of democratic institutions.

Literature:

1. Kudryachenko A.I. The place of the presidency in the context of the formation of the political system of Ukraine / AI Kudryachenko // Strategic Priorities. – 2006. – № 1. – P. 5 – 10.

2. Mazur D. Acts of lawmaking Presidential republics with a mixed form of government (general theoretical aspect): Author. Thesis. for obtaining sciences. degree candidate. Legal. sciences: 12.00.01 / D.V. Mazur; Hark. nat. Univ Ext. cases. – H., 2007. – 20.

3. Tolkachov O. Election of the President or of government? [Electronic resource]O.Tolkachov // Access mode: http://www.radiosvoboda.org/content/article/1879626.html

Статья отправлена: 05.06.2014

J21418-004

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INFLUENCE OF THE KEY ACTORS ON POLITICAL SITUATION IN UKRAINE

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Abstract*. This article highlights the main sources of threats and challenges of the national security of Ukraine, examines influence of the key actors on political situation in Ukraine. The theoretical value of research is that it contributes to the development of theoretical foundations of national security.*

Keywords*: national interests, national security, threats of national security, federalization.*

Setting issues: The events of recent months have shown that at this stage Ukraine found itself at the point of the geographic "East-West", and involuntary it turned into a bridgehead of world conflict of "power centers". Choosing European integration vector, Ukraine became the object of military aggression of Russia, which not only made a military invasion into the territory of the sovereign state, but it annexed a considerable part - Autonomous Republic of Crimea (ARC). The response of the international community was not slow in the framework of the UN General Assembly is strictly blamed such actions. The world's leading centers of power, maintaining the territorial integrity and inviolability of sovereign Ukraine, realized political and economic sanctions against the Kremlin's ruling elite. However, this did not stop the aggression of Russia against Ukraine. Introducing false information war and using force manipulation in the east and south of the state, instead of de-escalation of the conflict, Russia increases it every possible means. Thus, the problem under study is an attempt to determine the influence of global political actors at the regional and the national security of our country in the near and medium-term perspective.

This problem has always been at the focus of international and domestic experts, including: Brzezinski Coll., Hrinyayev S., Henry Kissinger, George Kennan, Gorbulin V., Litvinenko O., Kaczynski A., Manachinsky O., Parahonskyy B., Sobolev A., Dubov D., Rozumnyy M. and others.

The body of the article: Ukraine has favorable geopolitical position and is traditional beneficial geographic transit hub. Our country is multi-ethnic. This is because there was migration over the centuries through its territory of whole people and civilizations from south to north, from east to west and in the opposite direction. On the other hand, at various times, the territory of modern Ukraine was used by various empires as a "buffer frontier" from the raids of nomads in the Middle Ages, or as a defense of "Western culture" and spiritual values from aggressive Moscow rulers and vice versa, or in modern history, as a kind of "sanitary zone" between geopolitical interests of the West and the East blocks.

Such circumstances identified certain characteristics of political history and mentality of the Ukrainian people: on the one hand - a different historical views on the struggle for the independence of the sovereign Ukrainian state, on the other - the polarity of the mental attitude of the inhabitants of East and West to the "Ukrainian

identity" which, unfortunately, today is not common for all Ukrainians. At the current stage of development of the Ukrainian state, when Russia actually unleashed a war against our country, it is important to understand the factors that led to the conflict, in order to recreate the genesis of the conflict.

The genesis of the conflict

We propose to take into consideration the current situation in Ukraine, as a step in the long struggle of Ukrainian identity for independence from Moscow rulers. It turns out from the history that the strengthening of the influence of Moscow kings (tcars) on the territory of Ukraine in 1654 to 1945 came simultaneously with their fight against the generation of Ukrainian identity.

We were under the rule of two eastern autocracies. Once we were naturalized as Polish citizens, then - Russia and Austria. The deep roots of current events take their beginning in 1667, when huge territories became an unexpected gift for the Empire as the result of Andrusovo peace treaty: territories on the east from Dnieper including Kyiv retreated to Russia for 20 years theoretically and practically – far longer.

This fact gave to the Moscow economic resources as well as geopolitical position that was needed in order to become a great power. In Moscow own version of the history there is no formula Moscow kingdom= Russia + Ukraine, but this formula is crucial. We had a relatively low level of national consciousness unless the end of serfdom in 1861.

Campaign against Ukrainians over the years covered the following:

1. Extermination the base of the Cossacks on Dniper by Russian army in 1775;

2. Conducting large-scale russification of the Ukrainians: Malorossiya (Little Russia) was the name given by Russian tsars to Ukraine, while southern provinces, provided for the new colonization, called Noworossia (New Russia).

3. Russification of Ukraine has intensified in the second half of the XIX century: Valuev Circular 1863 and Ems decree 1876 stopped the formation of Ukrainian linguistic process in favor of Russian language in majority of the regions.

4. The basic language in cities was Russian while in villages it was Ukrainian. This led to the creation of the mix Ukrainian Russian dialect that was used by the low educated representatives of the working class from urban poor suburbs throughout Dnepropetrovsk and Donbass.

5. Soviet program against Ukrainians turned out to be several Holodomors the worst of which was the famine of 1932 - 1933. It was the evil process of the Stalin's regime named "collectivization"- artificial famine in Ukraine and nearest territories.

Currently, information warfare makes mighty pressure on the minds of inhabitants in those therritories of Ukraine, that once belonged to the so called "New Russia" that was the territory captured by the empire after the Russian-Turkish wars. "Empire specifically encouraged working people to move into these areas (Decree of the Russian Empire from 25.07.1781.), they were provided by benefits, the taxation, discounts and strongly favorable situation to increase number of citizens in the region." [1,57] However, people who moved here were mostly hardy and courageous people who were not afraid or threated by Tatars raids and the Crimean khans, or who had no other choice. Therefore, the rapid economic development of the region, active migration, early urbanization led to the formation of certain mentality among

the population of the region with positive (hard work, courage) and negative (low level of culture, paternalism, susceptibility to failure of laws and regulations) features.

Following the referendum in the Crimean peninsula was annexed by Russia and later the crisis shifted to the east of Ukraine. Officially Moscow denies any involvement in the events that destabilize the situation in Ukraine, although terrorists and insurgents enter the territory of Ukraine through the borders of Russia and the weapons they use belongs to modern Russian military forces. The national interests of Ukraine are under the indirect threat that turns out to have strong effects on the public from the leading countries of the West and the East.

Interests of the West

The principles of the foreign policy are specified in the laws of every state and are constant in the long run. However, in the face of threats to the current system of global security and international processes of convergence and divergence can accelerate the revising of the long run strategies. Thus we observe the strengthening of Ukraine's relations with its Western partners on the background of the Russian aggression. Western countries consider Ukraine as an important partner and a key factor of regional and European stability and security:

- Ukraine's integration into the international scientific and technological system of close cooperation involving domestic capacity;
- adequate natural-resource potential for the development of the agricultural sector;
- human resource - every year flow of migrants of non-Christian population increases to the EU in the long term, the EU may lose its position as a leader in christian world without the population of the Eastern Europe;
- cooperation on migration, asylum and border management;
- cheap and mentally close the workforce;
- market for goods (services);
- supply of high quality food resources;
- transit passage in international transport and communication links with the Middle East through the south of Ukraine, the Black Sea and the Caucasus;
- attractive area due to fuel and energy resources (Western Ukraine, Sumskiy region);
- military and technical cooperation (repairment service provided to the Western partners on the Ukrainian facilities, modernization of armored vehicles, production of armament and military equipment, export of spare parts).

IMF and the EBRD turned out to be tools of strengthening the relationships between developing countries and the West by means of providing loans to countries in support of the stabilization of national currency rate, international reserves and active balance of payments; NATO as a mechanism to curb geo-strategic interests of Russia; network of the various operating American foundations and non-governmental associations (U.S. Ambassador's Fund for Protection of Cultural Heritage (AFPCH), the American Foundation for Democracy, Media Development Fund “Ukraine – USA” [2], the Ukrainian American Coordinating Council [3] and others). Developed diplomatic bonds, intergovernmental relations – all this allow

Americans to collect the necessary information and even indirectly influence on the preparation and decision-making process by leaders of our country. Activity of the abovementioned American institutions (conferences, workshops, seminars) and their effective cooperation with Ukraine is the key instrument to increase the adherence of the population towards the West.

Interests of the Russian Federation

In turn, the Russian Federation during the presidency of Viktor Yanukovych made all the economic and political efforts in order to use Ukraine in its own geo-strategic interests. The revolutionary events in Ukraine significantly weakened the Kremlin's influence on further decision-making processes in our country in the field of international relations. In order to return the situation to the «status quo» Kremlin resorted to various means of manipulating the south and east of Ukraine. The influence of the Russian side has been very significant, analyzing developments in recent months, such as the use of information warfare on the minds of the Russian-speaking population and the international community. Russian Special Forces organized the subversive activity and propaganda for a several years, the success of these activities was provided by several factors, including: the Russian historical roots that were / are imbued in all spheres of life in Eastern and South-Eastern Ukraine, depression and neglect of the region. Today Russia comes up with propaganda policy on the territory of their own country and abroad by means of political and cultural tools of influence. According to the Ukrainian political scientist Oleg Medvedev, “Russia is in a state of informational warfare against Ukraine. Channel “Russia 24” and “First Channel” as well as all majorities of other channels can not be considered as media, but as the fighting units of the Kremlin administration.”[4]

Theory of Sir Halford John Mackinder , a prominent British geographer, insists on the opinion : “…one who capture Eurasia - owns the world” [5], in today's world, these words can be seen not in terms of military intervention, but in light of economic and financial expansion. The size of the national territory retains the value of one of the most important criteria for status and power. Functioning and existence of the Eurasian Union is impossible without Ukraine, with its population of 45.4 million people (according to the State Statistics Committee), every year Russia turns out to be the less European and the more Asian country, according tothe demographic boom in asian parts of the federation. Soon they will challenge leadership in a huge pan-Slavic Eurasian space of Russia. Without reintegration of Ukraine and Belarus, Russia neither geopolitically nor economically is able to achieve the restoration of influence in Central Europe. Ukraine belongs to the sphere of geopolitical interests of Russia because our territory is vital for Russian from point of logistics: we connect it with the Central and Western Europe (gas and oil pipelines, highways and railways) as well as we are nearest way from Russia to the Balkans - Mediterranean and in Transnistria - regions where Russia is trying to maintain its presence.”[6,13] Therefore geostrategic claims to destroy territorial integrity of Ukraine from Kremlins point of view is understandable. Kremlin aims:

- to restore the Kremlin's greatness by restoring sphere of influence in the territory of the former Soviet Union, because the preservation of military superpower

status is possible only by at least partial restoration of the old geopolitical and military unity. Preservation of internal cohesion and increase the integration of the former Soviet republics is seen by Moscow as one tidily connected chain of actions.

- prolongation of the frozen conflicts such as the conflict between Georgia and Abkhazia, South Ossetia, between Moldova and Transnistria - it would hold the building if the alternative pipeline by passing Russia from Azerbaijan and other Transcaucasian states " such as the planned Nabucco; it's success of its construction will depend on the of peace in the region"; [7,44]
- not to allow Eastern European countries joined NATO;
- cooperation in scope of defence. The share of Ukrainian GDP was 16% of the Soviet Unions' GDP and had such precision production, mostly concentrated in the defense industry, which cannot be subside in Russia. The geopolitical location and economic potential of Ukraine is an important factor for stability in the region;
- exploitation of Ukrainian natural resources. Prolific Ukrainian land is important for Russia from the view on possibility of large-scale military conflict as well as it can be the supplier of food for any army.

Interests of Ukraine

According to some estimates the geographical center of Europe is in Ukraine. But not always Ukrainian population has European mentality and consciousness. After the collapse of the Soviet Union, as well as all post-communist neighbors, Ukraine focused its foreign policy vector for the consolidation of the former socialist camp.

Over time, this vector has shifted to European integration, the EU serves as an example for all the partners who want to use these model for cooperation and promotion of the regional stability, to provide citizens with new opportunities, the establishment of the rule of law and democracy and the spread of European values among its countries-members.

Nowadays not geographical boundaries, but namely world views of the people create borders of European civilization space. And in recent months, these borders have spread significantly from the west of Ukraine to the east.

European integration is a key priority to constant foreign policy and domestic developments in Ukraine. Ukraine is considering signing of association agreement with the EU primarily as a comprehensive program of major internal reforms in all spheres of political, economic and social life of the state in accordance with European standards. It goes without saying that the interests of Ukraine directed towards Europe, namely:

- the creation of a free trade area (FTA), which will include integration of Ukraine into the EU common market;
- the introduction of a visa-free regime will facilitate inclusion of Ukraine into Europe;
- to strengthen peace and security in the region through multilateral cooperation within the UN, OSCE, Council of Europe (EU);
- strengthening of inter-parliamentary contacts;
- counseling for reform, adaptation and implementation of Ukrainian legislation according to European standards;

- development of new favorable climate for economic relations between Ukraine and Western partners for the development of trade and attracting foreign investment, promoting competition, which are key factors for economic restructuring and modernization;
- cooperation in the energy sector, according to the Treaty establishing the Energy Community;
- the abolition of customs duties, fees and other charges;
- military and technical cooperation.

Currently the EU produces 1\4 of global GDP and provides more than 1\3 of world trade; and this is the real evidence of the high competitiveness of the European economy. According to the State Statistics Committee in 2013, the export turns over with the CIS countries was 36%, with the EU - 26%, the same with imports. With the establishment of the FTA export opportunities for Ukraine ought to be much higher, but outdated technology slightly restricts the possibility to show full strength of the Ukrainian power.

Despite the situation in south and east of our country, Ukraine should maintain strategic relations with the CIS countries, including Russia. Eurasian Union - is not an option for Ukraine, because our country strives to become an economically developed country with widespread use of high technology, science, high living standards and quality of life, and European integration promotes such values.

The response of the international community

The author shares the opinion of experts that the three months of protesters at Independence Square in Kiev, as well as all over the country, turned out to be three so-called revolution:

• anti-corruption - the overthrow of the regime of Yanukovych, set out of the process of lustration in the administration, legislative and judicial branches of power;

• against empire - complete termination of Ukraines activity in the CIS, because CIS is considered by Russia as a space for its full military, political and economic domination.;

• against Soviet Union - "leninopad" which showed itself as systematic approach in fight against symbols of the previous totalitarian regime.

These revolutions provide a precedent for other post-Soviet states to follow the path of democratization and thus leave the political and economic orbit of the Kremlin.

Events that occurred more stunning impact on national security of Ukraine. According to the Budapest Memorandum on Security Assurances in connection with Ukraine to the Treaty on the Non-Proliferation of Nuclear Weapons [8], an international agreement, “a non-nuclear status of Ukraine” signed December 5, 1994 between Ukraine, Russia and the United Kingdom, according to the agreement Ukraine has been provided guarantees for the sovereignty, security and integrity of its territories. A referendum on the status of Crimea, March 16, 2014, carried out without respecting international principles for democratic expression of the people's initiative, that is why Ukrainian authorities do not consider it as legitimate as well as it does not have a legal right and not recognized by the international community because such a referendum is contrary to both: European and Ukrainian law.

Already there was deterioration of relations between NATO and Russia - suspended work created in 2002, NATO-Russia Council in both military and civilian sectors.

Parliamentary Assembly at its plenary session on April 9th 2014, condemned Russia's actions with regard to Ukraine and supported its integrity and unitary. Support took the form of resolutions and deprivation of the right to vote for Russia by the end of the year.

After a series of fruitless meetings of the Security Council (at least 10) an extraordinary meeting of the General Assembly was convened. Resolution 68/262 demonstrated the wide range of support to Ukraine from the international community. Western Europe showed unanimity and with other countries provided 100 votes in support of the resolution, in the same time 11 economically and politically dependent on Russia voted against it.

April 17, 2014 Four-part negotiations were held (US-EU-Russia-Ukraine)it was named Geneva Agreement, which aimed at settling the crisis in Ukraine. Official Kyiv performs all the arrangements, but Moscow evading their duties in the de-escalation of the conflict on the territory of Ukraine.

Assistance from the international community

National interests under the influence of internal and external threats, encourage state and its institutions, special structures to take measures to protect the interests of the individual and society, and, therefore, strengthen national security, to make changes in strategy and tactics of its securing. By annexing the territory of the Autonomous Republic of Crimea, the Russian Federation has created the image of our country as an unreliable partner, and the lack of the strategic management in the south and south-east of Ukraine, as well as skills in the area of national interest, effective strategies and programs turned out to be the most outrage internal threats.

Ukraine appealed to the international community, the Security Council of the United Nations, the OSCE to assist, consult and somehow curb aggressive measures taken by the Russian Federation. The UN Security Council constantly condemned Russia's actions and calls for dialogue in order to stop the military aggression and make create effective dialog between Russia and Ukraine. United States, Canada, the EU imposed sanctions against the powers of Russia, Ukraine and the Autonomous Republic of Crimea, such as freezing the accounts of certain political elites, joint projects, issuing visas, the suspension of political relations and military cooperation.

Conclusions

Analysis of the influence of foreign factors on the national security of Ukraine provides the possibility to make some conclusions, particularly those actions that would stabilize the situation in our country. Currently not just apply to direct force against a competitor, because nuclear weapons weakened favor of war as an instrument of policy, or even threats. The growing economic interdependence of countries makes political use of economic blackmail less successful. Thus, diplomacy, maneuvering, building coalitions, co-optation and prudent use of political trump cards already became the main components of a successful implementation of the strategic policy of the government of Ukraine, just as the international community

together with the Ukrainian authorities are trying to solve the crisis created by the Russian Federation to the south and east of Ukraine.

To ensure the shift in situation, the following steps should be provided:

1) introduction of selective visa regime for citizens of the Russian Federation;

2) strengthening of national water, air and land borders;

3) maintaining strategic-partnership with Western partners as well as with countries of the Customs Union;

4) to keep up with the European “road map” for successful implementation of reforms in Ukrainian legislation according to European standards;

5) the cancellation of all cooperation with Russia in the military-industrial complex;

6) stabilization of the situation in Eastern Ukraine by the introduction of martial law in the Donbas;

7) re-orientation of the national economy in the European integration vector;

8) to establish closer contacts with the following organizations: UN, OSCE, Council of Europe, NATO.

9) NATO membership.

References:

1. History of Donbass / V.I.Podov, V.S.Kurylo; State bookmark “National University of Taras Shevchenko in Lugansk” - Lugansk: Type of RS "LNU", 2009. - P. 57

2. U.S. Ambassador's Fund for Protection of Cultural Heritage (AFPCH), the American Foundation for Democracy, Media Development Fund "Ukraine-US" [electronic resource]. - Mode of access: http://ukrainian.ukraine.usembassy.gov/uk/democracy.html

3. Ukrainian American Coordinating Council [electronic resource]. - Mode of access: http://www.usukraine.org/ukrainian/u_uacc031711.shtml

4. "Rehearsal great war" between Ukraine and Russia [electronic resource]. - Mode of access: http://www.bbc.co.uk/ukrainian/press_review/2013/11/131101_ukr_press_ms.shtml

5. Bzhezynskyy Coll. The Grand Chessboard: American Primacy and Its Geostrategic Imperatives. - Moscow: Internat. Relations, 2010. - P. 44-46

6. Ukraine Military security of the Millennium. - K.: Stylos, 2002. - P.13

7. O.Y.Manachinsky, A.A.Sobolev. Military security and the influence of geopolitical factors on it: Monograph. - K.: NISS, 1997. - P.44

8. Budapest Memorandum on Security Assurances in connection with Ukraine to the Treaty on the Non-Proliferation of Nuclear Weapons [electronic resource]. - Mode of access: http://zakon4.rada.gov.ua/laws/show/998_158

9. Law of Ukraine "On national referendum" on November 6, 2012 № 5475-VI on the official website of the Verkhovna Rada of Ukraine [electronic resource]. - Mode of access: http://rada.gov.ua

10. Resolution GA 11493 UN Security Council "The territorial integrity of Ukraine" [electronic resource]. - Mode of access: http://www.un.org/News/Press/docs/2014/ga11493.doc.htm

Sending by author Poliakova Liliia 28.06.2014.

J21418-005

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KINDS OF PROMOTION OF PUBLIC SERVANTS

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Development of market relations involves updating the existing and creation of new legislation. Generally turning to the issue of legal incentives, the article considers the types of incentives in the public service. The author concludes that the promotion should be timely, relevant, and authoritative, it should have a clear legal basis. Therefore, it is proposed to adopt the federal law, which would regulate mechanism for the promotion of public servants.

Keywords: promotion, types of incentives, public servants, form and the base of the promotion, merit, public service

The development of market relations involves updating the existing and creation of new legislation. The modernization and development of the judiciary, creation of an efficient management and administration of the system, jurisdiction separation between federal and regional powers and changes in municipal relations require great work on supporting of these processes with modern regulatory framework. The legal science and legal practice give an opportunity to find optimal theoretical constructs to achieve the objectives in the state. The Decree of the President of the Russian Federation of 10 March 2009 №261 "On the federal program" Reforming the Civil Service of the Russian Federation (2009-2013) "[1] has the following objectives: introduction of new methods of planning, financing, motivation and assessment of civil servants, rational use of resources in the public service and others. Institute of encouragement would be one of the unifying point in the development of processes of motivation.

Generally, turning to the issue of legal incentives, it seems appropriate to consider the classification of promotions in the public service.

It should be noted that there have been attempts to classify the encouragement, which is applied to civil servants, in the legal literature. Thus, Professor Belsky C. S. [2] identifies three groups of incentives:

1) Moral (awarding of certificate of honor. Entering in the book of honor and on board of honor, expression of gratitude, awards and medals, awards of honor);
2) Material (bonus, awarding of valuable gift, annual bonus);
3) Organizational (job promotion). However, it seems that this classification cannot be considered sufficiently complete, because it does not take into account the real practice, which exists among the state apparatus, where the encouragement has an implicit and non-formalized nature and it is not documented, but actually, it is widely used.

The legal regulation of encouragement criteria requires further improvements since the choice of certain incentives depends on the specific achievements. The Labor Code of the Russian Federation does not contain new, original parts on this item. Moreover it does not contain even those encouragement criteria, which was in the Labor Code of the RSFSR (exemplary performance of job duties, development of

labor productivity, improvement of product quality, continuous and perfect work, innovations) [3]. Providing the employer the right to encourage workers only for honest execution of duties, the Labor Code of the Russian Federation thus does not correspond to the fundamental principle of institute of encouragement – award of merit in work activities for achievements, which exceed the results of honest work, and it is difficult to accept.

This lacuna in the legislation is the result of a derogation from that principle, which is expressed in the absence of a formal classification of encouragement. The Labor Code subdivides the encouragement into two groups – «Incentive for success in work» and «Incentive for special labor merits». Article 191 of the Labor Code of the Russian Federation does not contain a clear gradation of incentives depending on the degree of labor merits. The only exception is the designation as a criterion of encouragement for special merit, which can be used as reason for workers to be awarded by the State.

This situation creates a number of contradictions in the legislation. There are cases of use of the incentives in practice, which are disproportionate to the labor merits of workers. In particular, there are cases, when workers are awarded by the State for performance of employment duties for service, but not for outstanding service [4]. It is quite clear that such facts can reduce the prestige and value of the government awards.

Article 55 of the Law №79 defines two types of rewards for performance: rewarding and awards. Within the meaning of that article the rewarding, as a rule, includes cash payments, and award has moral character, which is an expression of recognition of merits of a civil servant.

Such differentiation is made for the first time: not even pre-existing civil service legislation and the labor laws do not determine the award as a special legal phenomenon. Awarding, including state award, was considered one of the types of encouragements. It should be noted that the renouncing general term that covers all the actions of the employer on the perfect and effective service of a civil servant, it is not entirely appropriate, even more the legislator uses other concepts, such as "expression of gratitude", "award of honor." Moreover, the incentives cannot always be in if form of financial support (property acquisition). For example, among the incentives of the Government of the Russian Federation should be mentioned the Diploma of the Russian Government.

There are additional grounds for encouragement in regional regulations on civil service. Krasnodar Krai, for example (art. 17) [5] – «quality execution of work duties by public servant». Indeed, the State assumes the duty to encourage public servants under certain conditions. This regulation can be consolidated both at the federal and regional levels.

The encouragement of the public servants can be classified on the following grounds:

1. Means of influence on civil servants – material and moral.

Non-financial encouragement includes: expression of gratitude, awarding of certificate of honor by local self-government bodies of territorial entity of the Russian

Federation or merit award of the Russian Federation, honorary titles of the region of Federation, awarding with orders and medals, new skill category.

The material incentives include awarding of valuable gift and lump sum for the performance of the service tasks of special importance and complexity or in case of anniversary (date of body of state administration; date of citizens; retirement).

2. Form of the publication of encouragement can be made orally, in writing form (e.g., order, decree, and ordinance).

3. Form of the civil incentive – gratitude, bonus, diploma etc.

4. Grounds for usage – perfect service, performance of the service tasks of special importance, heroism, etc.

5. Amount of incentives – one incentive, or more incentives, for example, civil servant may receive a bonus and get the next qualification category ahead of schedule.

6. Decision making – decision is made by one person or decision is made by a collective body, for example, rewarding with a personal weapon of the employee of drug agency by a decision of the board of the federal agency for drug trafficking.[6]

It is known that in every country (in this regard the Russian Federation is not an exception) the top form of the civil incentive for outstanding service has always been considered the state awards. Civil servants may be awarded with them on an equal footing with other citizens. At the same time, the public service is a special kind of socially useful professional activity, which is carried out by persons who are endowed with appropriate powers to implement the tasks of the authorities. That is why civil servants can be awarded with a special state award, which the other persons cannot be awarded with. An example is the honorary distinction "For Irreproachable Service." Awarding of this honorary distinction is made for a particular contribution to the development of Russian statehood, other fruitful activities, which made a significant contribution to the Fatherland. However, only merits are not enough to be awarded with honorary distinction "For Irreproachable Service". The requirements for the award include 20, 25, 30, 40 and 50 years of public service period of a civil servant, who has other state awards. The honorary distinction is given to people who have 20, 25, 30, 40 and 50 years of public service period. Actually, the honorary distinction “For Irreproachable Service” is a reward for years of service [7].

It is necessary to agree with this approach because time in service is traditionally one of the most important factor, with which civil service legislation both in the Russian Federation and other foreign countries is connected with acquisition by civil servants of many benefits and additional social guarantees related to the civil service. As a matter of fact, there was a practice to award for many years of "indisputable" service in pre-revolutionary Russia, put simply - for years of service. These awards were special symbols for long service on the ribbon of a Russian Order and the Order of St. Stanislaus of the third degree.

The service activity, which is more difficult, taking in account qualitative and quantitative characteristics of usual requirements, should certainly be encouraged. The lack of social activity of some civil servants may be explained to a certain extent because some heads forget about this provision, it often leads to dissatisfaction and conflicts. It is bad, when the most conscientious and diligent workers are not

receiving the attention of administration they deserve. The encouragement is an important factor in the development of mechanisms of stimulation and strengthening responsibilities in the public administration system, the indication of correct style of the leader.

In order to make the encouragement timely, relevant, authoritative, it must be based on a clear legal basis. Therefore, we believe it is advisable to adopt the Federal Law, which would regulate mechanism of the promotion of civil servants. The Subjects of the Russian Federation should adopt laws, which would regulate the types of encouragement and their application [8].

List of references:

1. СЗ РФ. – 2009. - №11. - Ст.1277.

2. Бельский К.С. Персональная ответственность в советском государственном управлении (понятие, формы, факторы укрепления): Учебное пособие. - М., 1988. - С.96.

3. Закон РСФСР от 9 декабря 1971 г. «Об утверждении Кодекса законов о труде РСФСР» // Ведомости ВС РСФСР. - 1971. - № 50. - Ст.1007 (утратил силу).

4. Указ Президента РФ от 2 марта 1994 г. №442 «О государственных наградах Российской Федерации» // САПП РФ. -1994. - №10. – Ст.775.

5. Закон Краснодарского края от 8 апреля 1996 года № 26 – КЗ «О государственной службе Краснодарского края» // Кубанские новости. – 2008. - №23.

6. Указ Президента РФ от 5 июня 2003г. № 613 «О правоохранительной службе в органах по контролю за оборотом наркотических средств и психотропных веществ»// СЗ РФ. – 2003. - №23. – Ст.2197.

7. См.: Гришковец А. А. Правовое регулирование государственной гражданской службы в Российской Федерации: Учебный курс. - М., 2003. - С.179.

8. См.: Добробаба М. Б. Поощрение государственных служащих субъектов РФ (на примере Южного Федерального округа) // Материалы научно-практической конференции. – Краснодар: Кубанский государственный аграрный университет. - 2004. –С.56 – 60; Волкова В. В. Проблемы правового регулирования поощрения государственных служащих / В. В. Волкова, Е. Борисов // Материалы международной научно-практической конференции «Право и правосудие в современном мире». СКФ ГОУ ВПО РАП. – Краснодар, 2006. - С.14-17.

Article is sent: 03.08.2014.

J21418-006

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EMPLOYEES' RIGHT TO SOCIAL LEAVE: DISADVANTAGES OF LEGAL SUPPORT

Annotation. This work contains the study of legal coverage of right of employees having children to rest time, namely, right to get a social leave (in case of birth of a child, adoption of a child, a childcare leave until the child is three years old). We are analyzing regulations of applicable labor legislation and Draft Labor Code. We are identifying disadvantages in this field and are giving offers related to their eliminations.

Key words: employee, child, right, Labor Code, rest time, leave.

Our country provides equality of labor relations for all its citizens; this approach is fixed in Art. 2-1 of the Code of laws of Ukraine on labor. This provision complies with constitutional norms, namely, with Art. 24 of the Main Law declaring equality of constitutional rights and freedoms of the citizens of our country.

However, equality of labor rights does not mean that they are similar for all employees. It is about equal opportunities of their implementation and about taking into account some objective particularities of employees, i.e. subject differentiation of legal regulation of labor. Sex, age, health, marital status, social and legal condition are main grounds for such differentiation. Taking into consideration these particularities some categories of employees get some benefits or warrantees. And in such cases employee's sex is the main criteria, and now there are a lot of legal norms determining particularities of legal regulation of women's labor. A great deal of attention has been paid to this issue in the science of labor legislation, namely the works of O.A. Abramova, T.Yu. Akhaladze, F.O. Dzgoyeva, A.M. Kambarov, G.N. Netesyuk, F.M. Rayanov, N.P. Slugina, R.L. Sunyaeva, A.O. Kharytonova, I.I. Shamshyna, N.M. Sheptulina, etc. are dedicated to some aspects of assurance of rights of working women.

Traditionally women are placed in a particular category of employees basing on physiological particularities of female organism, the need to protect a woman-mother [1, p. 28–29], [2, p. 55], [3, p. 14], [4, p. 286], [5, p. 24]. Social responsibilities performed by women are regarded as another criterion of differentiation, as well as work related to upbringing and taking care of children, and the household [5, p. 9–10]. At the same time if there are no remarks to the first criterion, the second one sets off some of them. It is obvious that both parents take part in upbringing, and each family shall make its own decision how to divide their responsibilities. Accordingly, while identifying particularities of legal regulation of labor of persons having children, interests of both parents should be taken into account. As the volume of article is limited, it is impossible to cover all the problems related to guaranteeing labor rights of persons having children; thus, the aim of this work is to study legal procurement of right of such employees to the rest time.

This right is fixed in Art. 45 of the Constitution of Ukraine, and is provided with different types of rest time, including giving vacation package. In its turn, Art. 4 of the Law of Ukraine "On vacations" dated November 15, 1996 No. 504/96-BP

determines among social leaves the following: a maternity leave related to pregnancy and delivery, a childcare leave until the child is three years old, a leave related to adoption of a child, and additional leave for employees having children.

It is obvious that the first type of leaves can be given and is given to women only. As for the other types of leaves, let us try to analyze the legislator's point of view.

Thus, a childcare leave until the child is three years old is determined by Art. 18 of the Law of Ukraine "On vacations" and part 3 of Art. 179 of the Code of laws on labor of Ukraine. Right to such leave, except for mother, can be given to other persons. In the meantime, if according to part 7 of Art. 179 of the Code of laws on labor of Ukraine these persons include father of a child, their grand-mother, grand-father, or other relatives who actually take care of a child, part 3 of Art. 18 of the Law of Ukraine "On vacations" expands this list, including the persons who have adopted a child or become foster parents for a child, and one of adopting parents. It ought to be noted that Art. 18 of the Law of Ukraine "On vacations" in its first edition included adopting parents and foster parents, but the category of "one of adopting parents" was added only with the Law of Ukraine "On changes to some legal acts of Ukraine on determining social warrantees to the adopting parents" dated March 10, 2010 No. 1959-VI. The order and the procedure of provision of such vacation packages are strictly regulated by Art. 20 of the Law of Ukraine "On vacations", and are actually quite effective.

As for the next type of leaves, namely a leave related to adoption of a child, they are determined in part 2 of Art. 17, Art. 18-1 of the Law of Ukraine "On vacations", and Art. 182 of the Code of laws on labor. It ought to be noted that both regulations determine two types of leaves depending on the age of adopted child.

Thus, if the adopted child is a newborn child then according to part 2 of Art. 17 of the Law of Ukraine "On vacations" the adopting persons shall have right to get a leave of 56 calendar days (70 days in case of adoption of two and more children) from the date of adoption. It is important to take note of the use of the term "person" in the regulation, as this person can be both the woman and the man. At the same time it is determined that in case of adoption of a child (children) by both parents this leave shall be given to one of them upon their choice. In the Code of laws of Ukraine on labor, such leave is foreseen only for women (part 1 Art. 182). In order to eliminate abovementioned contradictions, part 1 of Art. 182 of the Code of laws of Ukraine on labor should comply with the provisions of the Law of Ukraine "On vacations".

Other type of leaves related to adoption is foreseen in case of adoption of a child older than three years old. They have been introduced recently (with the Law of Ukraine "On changes to some legislative acts of Ukraine on state support of families having adopted child among the orphaned children or children deprived of parental care" dated September 23, 2008 No. 573-VI). This regulation made amendments to the Code of laws of Ukraine on labor (amendment of Art. 182 with part two) and to the Law of Ukraine "On vacations" (amendment of the law with Art. 18-1). And once again, provisions of these regulations are slightly different. The Code of laws of Ukraine on labor prescribes provision of such leave to women, with the possible use

of such leave by father of a child. The Law of Ukraine "On vacations" determines possibility of getting such leave by the person who has adopted a child among orphaned children or children deprived of parental care. If adopting persons are the family, such leave (according to Art. 18-1 of the Law of Ukraine "On vacations") can be given to one of them upon their choice. As well as in the previous case such contradictions should be removed by making the content of part 2 of Art. 182 of the Code of laws of Ukraine on labor compliant with Art. 18-1 of the Law of Ukraine "On vacations".

Also we would like to pay attention to the unjustified use of very general term "person" in the text of Art. 17 and Art. 18-1 of the Law of Ukraine "On vacations". Thus, the definition dictionary gives the following definition of the word "person": "some man, individual" [6, p. 345]. In the theory of law the "person" means "particular person that is characterized by individual stable complex of personal qualities of biological and social nature" [7, p. 63], the "person having historically created development level, using rights given by the society, and performing the entrusted tasks" [8, p. 243]. As we can see, from the point of view of the law, the person is not just a man, but is the bearer of some rights and obligations. The type and amount of the latter shall be definitive for their legal status. In our case – for the legal status of employees as they have right to a leave being the subject of labor relations.

Study of the content of the Draft Labor Code of Ukraine [9], namely study of Art. 197, that prescribes giving a leave related to adoption of a child older than three years old conforms reasonability of the use of the term "employee" while defining person having right to such leave.

It is also worth analyzing regulation of the procedure of giving such leaves. According to part 6 of Art. 20 of the Law of Ukraine "On vacations" a leave related to adoption of a child older than three years old shall be given upon the request of a person who has adopted a child, based on the decision of adoption of a child, and shall be executed by an order (instruction) of the owner or the authorized body. Under such conditions, as it was successfully noted by L.M. Zilkovska, confidentiality of adoption is breached [10, p. 52] that can harm both children and their parents. It should be noted that L.M. Zilkovska spoke of this defect even at the stage of the project of the Law of Ukraine "On changes to some legislative acts of Ukraine on state support of families having adopted child among the orphaned children or children deprived of parental care", but her remarks were not taken into consideration. And this, in its turn, requires development of the procedure of giving leaves related to adoption of children older than three years old that could keep confidentiality of adoption, i.e. not only the fact of adoption, but also confidentiality of some of its stages and existence of adoption relations.

Within this aspect it is worth using experience of Russia, where the decree of the Government of the Russian Federation dated October 11, 2001 No. 719 established the Procedure of giving leaves to employees having adopted a child. In this decree one of clauses (Clause 7) directly foresees criminal responsibility in accordance with legislation of the Russian Federation for persons breaking confidentiality of adoption. It simplifies considerably the use of punishment for employees or officers executing leaves related to adoption of a child.

J21418-007

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CONCERNING THE ISSUES OF PERFECTING THE TERMS «FISH-FARMING» AND «FISHING»

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Abstract. In this paper we describe the content of terms «fish-farming» and «fishing». Propositions to perfect existing definitions of these terms are formulated.

Key words: aquiculture, fish-farming, fishing, fish industry, fishery activities.

The mankind is engaged in fishing from the old times, it is spread everywhere throughout the planet. Fisihing – catching and capturing of fish, sea animals, whales, sea spineless and other sea products. According to modern understanding fishing covers extraction (catching, capturing, gathering) not only of fish but of all water living resources, i.e. organisms, whose life is impossible without water residence. Fish on all stages of growth, sea mammals, water spineless, crustacea, other water animals, water plants.

Old-established and developed branch of aquiculture, that deals with artificial fish breeding and increasing of fish resources in natural basins – is the fish-farming. Within the fish-farming some streams could be distinguished: pond fish-farming, fish breeding on thermal waters (industrial fish-farming), lake-goods farmstead, raising of juvenile fish for the replenishment of valuable species stocks (salmon, sturgeon) and also aquarium fish-farming. All these forms are allied with biotechnologies of reproduction and fish breeding [1].

So, fishery – one of the main types of animal world objects` utilization, the aim of which is to obtain different types of food, pabular, technical and medical products for satisfaction of population and national economy needs. Legal regulation of public relations, existing in this sphere, is based on the Laws of Ukraine “About fish farming, industrial fishing and water bio resources protection” [2], “About aquaculture” [3], “About animal world” [4], decrees of the Cabinet of Ministers of Ukraine, legal acts of the Ministry of Ecology and natural resources of Ukraine [5], State Agency of the fish industry of Ukraine [6] and the Ministry of the agrarian policy and supplies of Ukraine [7]. The last , are legislatively determines as specially authorized state bodies in the sphere of fish-farming and fishing. `

According to the Art. 25 of The Law of Ukraine “About animal world” catching of fish and water spineless are considered to be fishing. On the territory of Ukraine, according to the legislation, industrial, amateur and sport fishing could be conducted. Rules of fishing, fishing objects, procedure of assignment for use of fish-farming water objects, and also requirements for fish farming are determined in the way, established by this Law and other legal acts.

In 2011, July the Law of Ukraine “About fish farming, industrial fishing and water bio resources protection”, which determines the main basis for activities and state regulation in the sphere of fish farming, the procedures of relations of state bodies, local self-government and business entities, that conduct fish-farming activities in internal water objects of Ukraine, internal sea waters and territorial sea,

continental shelf , exclusive (maritime) economic zone of Ukraine and open sea, was adopted.

By the Art.1 of this law such terms, as amateur fishing, illegal fishing, unaccountable fishing, unregulated fishing, industrial fishing, fishing and sport fishing are formalized. The term fishing is formulated as water bio resources gaining in fish farming water objects.

At the same time, as distinct from fishing the term of fish-farming is left legislatively undefined, be, however, legally interpreted on statutory level, in particular in the State statistics committee Order "About approval of Methodological norms of organization of state statistics supervision concerning the fish farming activities of enterprises", it is determined as breeding and raising of fish and other water living resources in specially created artificial conditions or determined for this fish farming water objects.

Taking into account, that fish-farming is one of the branches of economy, that is engaged in fish breeding, increasing and improvement of fish supplies, in law enforcement practice fish-farming in natural basins and ponds could be distinguished.

With the aim of Ukrainian fishing industry development, in 2004 the Nation-wide program of fishing industry development for the period to 2010 was worked out and adopted, aimed to realization of state policy concerning fishing industry development, support of fishing branch with financial, material and technical and other resources, strengthening of its industrial, scientific and technical potential, coordination of activities of central and local bodies of executive power and local self-government, enterprises, agencies and organizations with the aim to resolve the most important problems and create appropriate economic conditions for the state fish farming complex functioning.

At the same time, the important achievement of above mentioned program is the legal preservation of fishing industry separation for sub branches – fishing and fish-farming. Thus, if fishing is considered to be fishery and gathering of other water resources in fish-farming water objects, fish-farming is breeding and raising of fish and other water live resources in specially created artificial conditions or determined for this fish-farming water objects.

Fish-farming is exercised by artificial breeding and raising of water organisms, that are being kept in bond in specially created artificial fishing or other adopted for this buildings, isolated natural and man-made basins, and also by raising of organisms of "sitting" types at specially determined areas of basins in the condition of natural freedom.

The procedures of fish-farming are established by the Instruction of the procedures of artificial breeding, raising of fish, other water live resources and their utilization in special commodity fish farms, that is approved by the Order of State fishing industry agency of Ukraine [10].

According to the National classifier of Ukraine SC 009:2005 (Classification of types of economic activity), approved by the Order of the State Committee for Technical Regulation and Consumer Policyof Ukraine (Derzhspozhivstandart) of Dec 26, 2005, № 375, the raising of fish stocking material (young oysters, mussels, shrimps, crustacea, hutchling etc.); breeding of red and other sea algae adaptable for

consuming, sea and freshwater fish-farming, oyster breeding, rendering services related to the activities of fish breeders and fish farms, inspection of basins` condition, are referred to fish-farming (code 05.02). [11]. Fish-farming doesn`t include toad breeding and fishing as kind of sport or leisure.

So, concerning the determination of terms fishing and fish-farming, for today there is no unified complex definition of these terms. In this article all legal acts in the sphere of fish-farming, that contain terms fishing and fish-farming, were reviewed, thus in conclusion we are proposing to summarize common definition and make amendments to the Laws of Ukraine "About fish farming, industrial fishing and water bio resources protection" and "About Aquaculture":

to amend Art.1 of the Law of Ukraine "About Aquaculture", in particular refine the term "aquaculture (fish-farming) – purposeful utilization of fish-farming water objects (their parts) for gaining of maximal amounts of useful biological agricultural products (fish, shellfish, spineless, algae, other water organisms) by the way of their artificial breeding and upkeep" we are proposing after the words (fish, shellfish, spineless, algae, other water organisms) to amend term by the sentence "*that is organisms, whose life is impossible without residence in water";*

to amend Art. 1 the Law of Ukraine "About fish farming, industrial fishing and water bio resources protection" term "fishing – collecting of water bio resources in fish-farming water objects", we are proposing after collecting of water bio resources amend the article by the words "*on all stages of development*".

References:

1. Про Загальнодержавну програму розвитку рибного господарства України на період до 2010 року: Закон України від 19 лютого 2004 року № 1516–IV // Відомості Верховної Ради України, 2004. — № 22. — ст. 313.

2. Про рибне господарство, промислове рибальство та охорону водних біоресурсів: Закон України від 08 липня 2011 року № 3677-VI / [Електронний ресурс] // Офіційний сайт Верховної Ради України. — Режим доступу: http:// http://zakon4.rada.gov.ua/laws/show/3677-17.

3. Про аквакультуру: Закон України від 18 вересня 2012 року № 5293-VI / [Електронний ресурс] // Офіційний сайт Верховної Ради України. — Режим доступу: http://zakon4.rada.gov.ua/laws/show/5293-17.

4. Про тваринний світ: Закон України від 13 грудня 2001 року № 2894-III / [Електронний ресурс] // Офіційний сайт Верховної Ради України. — Режим доступу: http://zakon4.rada.gov.ua/laws/show/2894-14.

5. Про Положення про Міністерство екології та природних ресурсів України: Указ Президента України від 13 квітня 2011 року № 452 / [Електронний ресурс] // Офіційний сайт Верховної Ради України. — Режим доступу: http://zakon2.rada.gov.ua/laws/card/452/2011.

6. Про Державне агентство рибного господарства України: Указ Президента України від 16 квітня 2011 року № 484/2011 // Офіційний вісник України. 2011. — № 13. — Ст. 651.

7. Про Положення про Міністерство аграрної політики та продовольства України: Указ Президента України від 23 квітня 2011 року № 500/2011 //

Офіційний вісник України. 2011. — № 31. — Ст. 1326.

8. Про затвердження Правил промислового рибальства в рибогосподарських водних об'єктах України: Наказ Державного агентства рибного господарства України від 18 березня 1999 року № 33, зареєстрований в Міністерстві юстиції України 25 травня 1999 року за № 326/3619 / [Електронний ресурс] // Офіційний сайт Верховної Ради України. — Режим доступу: http://www.rada.gov.ua.

9. Про затвердження Методологічних положень з організації державного статистичного спостереження щодо рибогосподарської діяльності: Наказ Державного комітету статистики від 10 грудня 2010 року № 502 / [Електронний ресурс] // Офіційний сайт Верховної Ради України. — Режим доступу: http://www.rada.gov.ua.

10. Про затвердження Інструкції про порядок здійснення штучного розведення, вирощування риби, інших водних живих ресурсів та їх використання в спеціальних товарних рибних господарствах: Наказ Державного комітету рибного господарства України від 15 січня 2008 року № 4, зареєстрована в Міністерстві юстиції України 28 січня 2008 року за № 64/14755 / [Електронний ресурс] // Верховної Ради України. — Режим доступу: http://www.rada.gov.ua.

11. Національний класифікатор України ДК 009:2005 (Класифікація видів економічної діяльності), затверджений наказом Держспоживстандарту України від 26 грудня 2005 р. № 375.

Дата відправлення: 13.10.2014

J21418-008

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BUSINESS CORRESPONDENCE AS A FORM OF BUSINESS COMMUNICATION

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Introduction.

The applicability of the issue is determined by practical necessity. Business correspondence is a form of commercial intercourse, playing an important role in a modern society. Any director, manager, government worker has to deal with the preparation of documentation and business letter writing.

Acceleration of social development, dynamic Internet usage for a quick information transmission made it essential to respond to all business matters immediately, precisely and in a qualitative manner. And it is «the speed that has become the main source of stratification and social dominance» [1, c.163]

In addition, the modern world, the world of transformation, «fluctuation and permeability» [1], dissolves territorial boundaries and it becomes enough for successful businessmen to use active business letter writing instead of real communication even internationally.

It should be mentioned that business letter writing doesn't mean a commonplace information sharing in the matter of emergent issues. A business letter is an official message. It is an official mail that helps to decide a great number of questions in management behavior.

And the efficiency of activity not only of one person but even of the whole company which is presented by this person depends on the skill to execute business letters correctly [2].

The main part.

Business correspondence is only one of the forms of a commercial intercourse which includes different kinds of the formal letter writing that are used in deciding questions in the course of official activities.

Such types of business letters as resume, letter of application, message are used more often. There is a great deal of waiver letters, inquiry letters, reminder mail, letters of confirmation, intent, notification.

Private letters are also often used in day-to day life. These are letters of invitation, apologies, condolence, and thank - you letters [3].

The main peculiarity of such letters is their officialization and this means business language standardization.

In officialletters it requires the usage of certain clichés, which make them more informative, understandable and promote documents circulation. Also the usage of ready language patterns allows not to waste time on definition search, characterizing typical situations.

The recommended wording of letters as a rule includes several points. These are the main clichés, which begin a letter and some additional language patterns, word combinations specifying information in the document.

Thus in the begging of a letter we can use such useful phrases as:
I am contacting you for the following reason...
I recently read/heard about .....
and would like to know ....
Having seen your advertisement in ...,
I would like to ...
I would be interested in (obtaining / receiving) ...
I received your address from…
and would like to ...
Additional phrases:
With reference to our previous agreement...
According to (the current agreement)...
with reference to your letter
Writing a letter of intent we can pay attention on the following words:
The main phrases:
We would like to order…
I am interested in (obtaining/receiving...)
You are kindly requested to review
Additional phrases:
We are considering the purchase of…
We are pleased to place an order with your company for…
We would like to place an order… [4]

The usage of standard formal phrases lets prepare business letters precisely and correctly of different types and hold conversation on a high-lying level. The observance of the moral principles is ofa great consequence. Despite of the existence of various kinds of business letters there are some general rules in business letter writing.

The main rule is a proper attitude to the partner. Business letters shouldn't contain any personal sympathy or antipathy, peculiarities of the character or any other material which can transform official letter to a correspondence of some other kind.

It should be also mentioned that one of the ethical rules is neutral tone of the note [5].

We should recommend you not to begin with the refusal, complaints and the desire to hurry up the addressee in the formulating of the letter.

The ability to express the main point, circumstances to define the offer, request, demand, arguments are the main criteria in business letter writing [6].

One of the main conditions of successful business dealings is the quick and clear answer.

In a business world any delay of the answer is considered as an unwillingness to cooperate. An answer made in time makes an addressee to think that you are a tactful person thinking about your reputation.

Conclusion.

Taking into account what has been told above we can draw a conclusion that business letter writing is a communication in short.

It gives a chance to improve the activity of a person and a company in whole.

A proper and correct business letter writing improves interrelation between people and observing all the rules shows your politeness and respect to a partner.

The ethics of the business correspondence is one of the key points of success.

It plays a great role where exactness and responsibility for every word you've said are of a great importance.

Business letter, especially the notification letter, a letter of notification, assumes the function of a legal document. And in this case, more is necessary and responsible for the accuracy of every word.

Necessary restraint and correctness. Adherence to ethical business writing success rate, business and purposeful person.

Literature:

1. Bauman Z. Liquid Modernity. Cambridge: Polity ISBN 0-7456-2409-X
2. Кирсанова М.В. Деловая переписка. - М.: Изд-во ИНФА-М, 2008, - 144 с.
3. Воротынцева Т. Деловая e-mail переписка. - М.: Изд-во Питер, 2012, - 176 с.
4. Деловая переписка. Структура письма. Образцы обращений. Словарь. – М.: Изд-во Феникс, 2006, - 240 с.
5. Теплицкая Т. Правила деловой переписки. - М.: Феникс, 2006, - 320 с.
6. Инджиев А. Язык делового общения. – М.: Феникс, 2007, - 248 с.

J21418-009

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THE BASIS OF MODERN TERRORISM

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Abstract. In this paper we describe the features and basis of modern terrorism. The theory of correlation of terrorism and fascism is also offering at this paper.

Key words: terrorism, social stability, public safety, fascism, preconditions of terrorism.

In recent years, researches have become increasingly interested in the problem of terrorism. Distribution of outbreaks of terrorism around the world makes the problem of it very substantial. An example of such shares is world known terrorist attack in the U.S. September 11, 2001, recent events in Minsk underground, London subway bombings and Madrid train bombings. Nowadays the whole world can observe an example of modern terrorism at Donbas called ‘Ukrainian political crises’ by some foreign media sources.

The problem of terrorism has been investigated by many famous scientists like Ghosh T.K., Spindlove J.R. and others. The goal of our report is to examine contemporary terrorism with respect to the mass violence committed by totalitarian regimes, specifically the Third Reich. The study of the basis of terrorism is a vital component for the success and failure of terrorist campaigns. And in order to solve the problem of modern terrorism we must know the origin of it. So, to fulfil this task and prove that fascism is a basic of modern terrorism we must review causes of terrorism, give characteristics to modern terrorism and fascism, comparing them.

First of all let’s give the notion of terrorism. There are a lot of them but Ukrainian scientists generally define terrorism as a dangerous act or threat, that are done publically, infringe public safety and create conditions in the social sphere for fear of direct or indirect influence on any decision [1].

Generally modern terrorism has a lot of causes. The first cause is crisis processes, which are typical for modern development. Here we must mention the role played by two world wars, arms race, outbreaks of social, racial, religious hatred, revolution, state terror. The second group of conditions is connected with revolutionary processes and their specific manifestations, especially in the last decade. The third group of conditions of terrorism in the modern world is connected with the ruling elite interest in various forms of terrorism as a means of achieving political goals in foreign and domestic policy. Terrorism, in particular, is indirect, but highly effective way to destabilize and weaken the enemy state. Another reason for the existence of contemporary terrorism is a global decline of regional structures of international security, accompanied by slacking and dissolution of state structures. Other powerful forces want to use the factor of instability and partial loss of control for solution their own objectives and targets.

Giving characteristics of terrorism we must say firstly, it’s a form of organized violence; secondly, using the physical power for political purposes; thirdly, it combines the high level of political motivation on the low participation of the people.

Finally, a terrorist activity is designed for a particular effect: to destabilize society. Its main purpose is not to reduce individuals or cause material damage, but to achieve social resonance and national destruction.

Modern terrorism was originated as a result of using terroristic methods in the Second World War. Scientists V. Emelyanov defined state terror as an act of physical and psychological violence realized by political structures if they have unlimited power. So, we can define this phenomenon as 'state terror' and Germany was an initiator of its appearance.

Generally it's known that fascism firstly appeared in Italy, but in Germany during Hitler's staying in power it has acquired the most aggressive forms. Nazism is racial ideology. And this is one of characteristic features of terrorism. So we can say that power in Germany in 1933 was captured by terrorists. The tragedy of Germany is that the Nazis came to power through constitutional way.

Before we outline the features of Nazism, we should give the general characteristics of fascism. Thus, fascism is an open terrorist dictatorship of the most reactionary forces. As we know from history, when such power comes to power it leads to tragic results. It happened in Germany too.

Let's consider the origin of fascism. Firstly, there is different link of social model of society. This happens in periods of transition from monarchy to republic. Here we can observe the replacing of political forces. But the monarchists don't want to lose power so they take extreme positions and cannot reach consensus with Republicans [2]. That's why the political struggle becomes armed.

Secondly, it's the crisis of the existing political systems. This cause arises from the first one. Society understands that the existing government in the country is obsolete. So there is a growing public revolt against the old regime and support of the new one, which promise to improve the situation in the state and society [3]. Thus, the Nazis came to power in Italy, Germany and Spain. But such civil revolt doesn't presume that new authority will be fascist. Unfortunately, Russia is trying to show Ukrainian Euromaidan as fascist revolt but not the revolution of partial dignity.

Thirdly, it's the crisis of mass consciousness; destroying the former system of value and loss of faith in traditional political parties and their leaders. Under these conditions there is the destruction of former ideals, which is replaced with new ideals. And new ideals are created by new government.

As for Germany, one reason the Nazis came to power was Germans oppression with the Versailles Peace Treaty. It accounted for the payment of reparations to many states affected by the aggression of Germany. The creation of their own army was also prohibited. When in 1933 the Nazis came to power, they refused from fulfilling the terms of this agreement. It marked the new stage not only in the history of Germany, but in all states all over the world.

The main reason why Nazi came to power is the social contradictions in the period of economic crisis. Under such conditions influence of radical leftists (communists) and right (fascists) increased. But the Nazis, unlike the communists promised to solve the socio-economic problems due to world domination, plunder and destruction of other nations.

Fascism existed on such principles as the open rate of force to fight, extreme position on dissidents, the creation of social tension in the country, aggressive behaviour, the proclamation of racial exclusivity and hegemony of one nation, the promotion of militarism and complete control over their lives and activities of society.

It must be said that fascism existed in Germany at an early stage as the ideology of one party, and after coming to power spread throughout the state.

So, we can say that fascism is the tenet of a centralized totalitarian and nationalistic government that strictly controls finance, industry, and commerce, practices rigid censorship and racism, and eliminates opposition through secret police.

There are fundamental distinctions between totalitarian state terror and global terrorism. When we speak of totalitarianism, we think of the Nazis. Some comparisons between Totalitarianism and Terrorism: Nazi was based on a boundless definition of the state, whose borders could expand almost without limits. Nazi Germany was highly organized, with great bureaucracies for persecution, and major secret police apparatuses. While they rendered a variety of services to their citizens, and therefore were at times popular, the most characteristic feature of these regimes was the mass production of death [4].

To summarize, when specifically comparing Nazism and contemporary terrorism, it is important to note that while the Nazis used terror against their own people and perpetrated genocide on other peoples, Nazi terror was a state phenomenon. Conversely, while contemporary terrorism may become genocides, there is no evidence yet that it has reached that point. So, fascism and terrorism are connected phenomena. That's why we can say that terror is a main tool of fascism and fascism is a basic of modern terrorism.

References

1. Правознавство: Словник термінів. За ред. В. Г. Гончаренка. Навч. посібн. – К.: Юрисконсульт, КНТ. – 2007. – 636 с.

2. М. С. Кельман, О. Г. Мурашин. З 14 Загальна теорія держави і права: Підручник. – К.: Кондор, 2006. – 477 с.

3. Spindlove, J. R. (2010) Terrorism today: the past, the players, the future.Upper Saddle River, N.J., Pearson Prentice Hall.

4. Ghosh, T.K., (et al., Eds.) (2010) Science and technology of terrorism and counterterrorism. New York, CRC Press.

Статья отправлена: 20.09.2014