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**THEME 1. THE CONCEPT OF LAW**

Part 1. What is law?

Categories in focus:

A) Problems of the definition of law

B) Classification of law

C) Features of law

D) Functions of law

E) Sources of law

F) Forms of law

The law affects every aspect of our lives; it governs our conduct from the cradle to the grave and its influence even extends from before our birth to after our death. We live in a society which has developed a complex body of rules to control the activities of its members.

There are laws which govern working conditions (e.g. by laying down minimum standards of health and safety), laws which regulate leisure pursuits (e.g. by banning alcohol on coaches and trains travelling to football matches), and laws which control personal relationships (e.g. by prohibiting marriage between close relatives).

Do you remember your first day in college? Chances are you spent most of that day trying to figure out the rules. All kinds of rules presented themselves to you: rules about which pieces of paper you had to have, where to exchange them for other pieces of paper, where to put your things, where to put yourself. Some rules were more compelling than others: if you are a young man receiving a government-backed loan for your education, you may have been required to demonstrate that you had registered for the draft in order to receive that aid. Other rules were given quietly and following them was clearly optional: You learned without being told that there was or was not a specific way to dress, to talk, perhaps even to sit and look about. In any case, there you were, an independent human being with the ability to decide for yourself which rules to follow and which to reject. Once you had sorted it all out, made your decisions, followed some rules to completion ("Here is the check for my tuition"), adopted others as a pattern for your behavior ("I will be in my Math class by 8:10 every Monday, Wednesday, and Friday morning"), and rejected others ("I don't care what the others do, I'm going to wear the clothes I have and that's that"), chances are life began to seem a little bit easier. You knew what you were doing.

What you went through in those first few days tells you a great deal about the role of rules in our lives — including the role of those rules we call laws. A rule is a guide to behavior. It may be a regulation established by persons in authority, a principle of conduct that one sets for oneself, or simply something that normally happens ("As a general rule, Ukrainians eat three meals a day"). A law is a rule of the first category: a regulation established by persons in authority. But not all such regulations are laws. A law is a regulation established by public authorities and backed by the collective power of the polity to which it applies. It is, in effect, a plan — a decision to handle a particular problem in a particular way — and a commitment, made by the entire polity when they acquiesce in the authority of those making the plan, that the plan will in fact be carried out. Because it is so strongly backed, it is the most powerful kind of rule. We have the power to act contrary to the law, but we do so at our peril.

So “what is law” and how is it different from other kinds of rules?

The multiplicity of definitions of law which exist in doctrinal writings depends upon the multiplicity of views on the origin of law, the sources of law, the vision of the nature of its links with the State, and also what essential peculiarities, and features of law underlie a particular definition, and what aspect of it as a complex social phenomenon is being investigated.

An important reason for differences in the definition of law is that each legal doctrine contributes to the basis of such a definition — natural-law, normativist, or sociological. This is characteristic for western and for Ukrainian legal doctrine.

During the formation of the Western legal tradition, natural law theory was the dominant theory; therefore law was defined as a model of human behavior, as the rule of the ought, the necessary, and not as actually existing positive norms.

Thereafter, when legal positivism dominated (however, while retaining a general pluralism of views of law) the view of law as norms of behavior in force dependent upon the will of the legislator dominated. This position is widely shared today. What conditions this position? It is evident that under conditions of a high level of the legitimacy of power and development of democratic institutions which take into account the opinions of the population when laws are adopted, there is no significant chasm between public opinion and the prescriptions of laws. Legislation has become an continuation of the will of the population, and does not operate contrary to this will. A correct, just lex also is jus. Jus acquires the expression of lex, and lex becomes the embodiment of jus. However, because there is no absolute identity in any society, for the West, the question of the conformity of jus to the moral and ethical foundations of society and corresponding adjustment of lex has been for all times a very topical one. Therefore, many scholars do not link law solely with the prescriptions of the State.

Harold J. Berman noted that traditionally the received concept of law as a body of rules derived from statutes and from decisions of courts which reflect the theory of the will of the legislator, or State, because the highest source of law wholly unsuitable for supporting research into a transnational legal culture. To speak about the Western legal tradition, he said, means to postulate a concept of law not as a body of rules, but as a process, a measure in which rules have content only in the context of institutions and procedures, values, and ways of thinking. As a consequence of this broader approach, the sources of law contain not only the will of the legislator, but also reason, the conscience of society, and its customs and habits.

Jurists are increasingly enlarging the foundation of law, including therein rules which exist in various social communities (the family, corporations, social associations, social courts, and so on) and the State. Lawrence Friedman, referring to the experience of the functioning of the legal system in the United States, singled out four types of law: simultaneously formal and public law (acts of Congress), public or governmental law which is not formal (norms actually existing; for example, norms relating to limiting speed on the roads), simultaneously formal and private law (procedure for the consideration of suits and appeals with the assistance of unofficial courts which decide disputes privately, but in compliance with all rules and procedures usually occurring in courts), and, finally, the law simultaneously private and informal (rules of behavior in the family). When using the word «law» [jus], Friedman believes, we are obliged to embrace all human life in all of its manifestations and classify all forms of human behavior as an element of law.

The normativist conception is based on the understanding of law as the aggregate of norms established by the State and protected by its coercive force. The moral-legal theory emanates from an understanding of law as a system of generally binding concepts of rights and duties of citizens, responsibility thereof, and so on, comprehended by society. The third, sociological theory, emanates from the fact that law is the social relations themselves, the real practice of State protection.

Modern conceptions of law are inseparable from notions of maximum freedom for the citizen, the individual. The principle that «all is permitted which is not prohibited by a law» is part of the «flesh and blood» of law (in the Ukrainian legal system it is consolidated at the constitutional level: Article 19, Constitution of Ukraine). Ensuring the free, autonomous, and initiative activity of the individual has become a major criterion of the legislative activity of parliaments and law-making of administrative agencies in civilized States. It has acquired significant weight in Ukraine. But this is not purely physical or mechanical, but an ethical measure of law, underlying which is an assessment of the advisability of expanding freedom, condemning unsubstantiated limitations of freedom, and so on. On the other hand, the principle operates in the constitutional rank of Ukraine and many other countries pursuant to which «agencies of State power and agencies of local self-government and officials thereof are obliged to act only on the basis, within the limits of powers, and in a means provided by the Constitution and laws of Ukraine» (Article 19, Constitution of Ukraine). This already is a principle of the limitation of freedom, of legal limitations for a whole number of subjects of law, indeed, that are on the whole justified. Law in this understanding limits agencies of State power and officials, obliges them to act on the basis of and in execution of the law, verifying all actions by them.

Only in a rule-of-law State is the flourishing of law possible because it does not step at the level of public legal consciousness, but is completed by the legitimation by society of norms of behavior and therefore becomes a truly operating body of rules.

From the position that these norms of behavior are legitimized by society, are recognized by this society (as the aggregate of all citizens) to be generally binding, they become a genuine regulator of social relations, especially in the public sphere.

On the basis of law as the general will of citizens who are the bearers of political power and sovereign rights for the exercise of democratic powers, the State grows and functions. Proceeding from the fact that a democratic State exists not on the basis of relations of «power — subordinate», but on the basis of the right of the people as the primary bearer of political power on the forming of the State, the State acquires the expression of a public-law union of the people.

Because this union is based on the right of the people to power, law becomes the foundation of this union.

Only law becomes capable of truly ordering power relations, because the people as the participant of a State acquire the rights to exercise State powers, and hence - also the right to control State power and the direct exercise thereof, including by means of representation. All activity of the State and the agencies thereof is exercised in legal forms which are determined by the mandate of the people.

Law becomes a means of limiting power, linking it to the benefit of its citizens, because the authority thereof rests on the will and authority of the people. This authority is underpinned by the political responsibility of power to the people through period free elections and the participation of citizens in the real exercise of State policy and management of the State.

From the foregoing arises a certain generalization. The idea of the rule-of-law State and management of the State by law only is partially suitable for the ideology of a State build on a positivist understanding of law because there remains the link of the State not with jus, but with lex, and this linkage is half-and-half and unstable. Such linkage is possible, on one hand, when there are stable democratic traditions for forming and exercising State power, an awareness of the indestructibility of State-law precepts not only for the individual, but for agencies of State power and their officials. On the other hand, the link by lex provided for the obligatory existence of developed procedures for appeal against the unlawful decisions of agencies of State power and officials thereof.

In order to understand different aspects of law, it is helpful to look at various areas or its classifications. There are various ways in which the law may be classified.

The most important ways are by:

1) the type of law (i.e. matters that the law is regulating) and

2) the source from which it comes.

According to the type, law can be classified as substantive or procedural. While substantive law regulates areas of human activity, procedural law sets down rules for the manner of enforcing the law in relation to that activity. Substantive law is the body of rules of law which regulate the rights, duties and liabilities among citizens and governments. Procedural law lays down the rules governing the manner in which a right is enforced under civil law, or a crime is prosecuted under the criminal law.

National and international law. National law is the law which applies within a state: each state has its own national law and there are often considerable differences between the laws of individual states. One branch of national law is the law relating to conflict of laws, otherwise known as private international law, which determines which national law governs a case in which there is a foreign element. Public international law governs the relationships between states and other entities operating on the international plane. It is contained in conventions and treaties devised and agreed to by states to regulate activities in which they have a common interest or which take place across national borders. Its interpretation and enforcement may be the task of an international court recognised in or established by a treaty.

Professionals subdivide law into: substantive, jurisdictional, governmental and structural. Substantive law deals with human conduct and includes the broad areas known as criminal law and civil law. Jurisdictional law deals with the power of political entities. Governmental law views law in terms of the branch of government – executive, legislative or juridical. Structural law classifies law by the person, group or institution to which it is addressed.

It is also frequently classified into areas of public and private law.

Public law. Public law is concerned with the relationship between the state and its citizens. This comprises several specialist areas such as:

Constitutional law. Constitutional law is concerned with the workings of the constitution. It lays down and guides the duties and powers of the government, and the duties and rights of its citizens and residents.

Administrative law. There is no universally accepted definition of administrative law, but rationally it may be held to cover the organization, powers, duties, and functions of public authorities of all kinds engaged in administration; their relations with one another and with citizens and nongovernmental bodies; legal methods of controlling public administration; and the rights and liabilities of officials. There has been a dramatic increase in the activities of government during the last hundred years. Schemes have been introduced to help ensure a minimum standard of living for everybody. Government agencies are involved, for example, in the provision of a state retirement pension, income support and child benefit. A large number of disputes arise from the administration of these schemes and a body of law, administrative law, has developed to deal with the complaints of individuals against the decisions of the administering agency.

Criminal law. Certain kinds of wrongdoing pose such a serious threat to the good order of society that they are considered crimes against the whole community. The criminal law makes such anti-social behaviour an offence against the state and offenders are liable to punishment. The state accepts responsibility for the detection, prosecution and punishment of offenders.

Private law. Private law is primarily concerned with the rights and duties of individuals towards each other. The state’s involvement in this area of law is confined to providing a civilised method of resolving the dispute that has arisen. Thus, the legal process is begun by the aggrieved citizen and not by the state.

Private law has many different branches. Each of these has their own policies and nuances.

The main ones are: property law, law of contract, law of tort, family law, law of succession, company law, employment law.

Property law: Property law is the law that in the common law legal system governs the various forms of ownership in real property and in personal property. Property is anything that is owned by a person or entity. Property is divided into two types: "real property," which is any interest in land, real estate, growing plants or the improvements on it, and "personal property" (sometimes called "personalty"), which is everything else.

Law of contract: is the branch of the law which determines whether a promise is legally enforceable and what are its legal consequences.

Law of torts: Law of torts deals with torts, which can be defined as civil wrongs.

Examples of torts are: nuisance, negligence, defamation, and trespass.

Family law: Family law covers such matters as: validity of marriage, rules for divorce and the custody of the children.

Law of succession: Law of succession regulates who inherits property when a person dies without a will, and establishes the rules for making a valid will.

Company law: Company law is very important in the business world: it regulates how a company should be formed, sets out formal rules for running companies, and deals with the rights and duties of shareholders and directors.

Employment law: Employment law covers all aspects of employment, from the original formation of a contract of employment to situations of redundancy or unfair dismissal.

Sale of goods law: This is the set of legal rules regarding the sale and purchase of goods. There needs to be a proper system in place to enable the smooth transaction of goods and services; the sale of goods law is the set of regulations one should refer to, if any disputes arise.

Minor law: A minor is a person who is below 18 years of age. There are several rules and regulations set in place for the protection of minors. Exploiting a minor is a grave offense.

In addition to these areas of private law, there are also laws relating to copyright and patents, to marine law and many other topics, so it can be seen that private law covers a wide variety of situations.

Private law is also called civil law and is often contrasted with criminal law.

Criminal and civil law. Legal rules are generally divided into two categories: criminal and civil. It is important to understand the nature of the division because there are fundamental differences in the purpose, procedures and terminology of each branch of law.

Criminal law. The criminal law is concerned with forbidding certain forms of wrongful conduct and punishing those who engage in the prohibited acts. The consequences of being found guilty are so serious that the standard of proof is higher than in civil cases: the allegations of criminal conduct must be proved beyond a reasonable doubt. If the prosecution is successful, the defendant is found (convicted) and may be punished by the courts. Punishments available to the court include imprisonment, fines, or community orders such as an unpaid work requirement. If the prosecution is unsuccessful, the defendant is found not guilty (acquitted).

Civil law. The civil law deals with the private rights and obligations which arise between individuals. The purpose of the action is to remedy the wrong that has been suffered. Enforcement of the civil law is the responsibility of the individual who has been wronged; the state’s role is to provide the procedure and the courts necessary to resolve the dispute. In civil proceedings a claimant sues a defendant in the civil courts. The claimant will be successful if he can prove his case on the balance of probabilities, i.e. the evidence weighs more in favour of the claimant than the defendant. If the claimant wins his action, the defendant is said to be and the court will order an appropriate remedy, such as damages (financial compensation) or an injunction (an order to do or not do something). If the claimant is not successful, the defendant is found not liable.

All these branches of law work simultaneously to enable the smooth functioning of society and its legal institutions.

Ukrainian law is commonly divided into the following areas:

• Public law

• Private law

• International law

There are some universal characteristics of law. First, there is an intellectual interest in understanding such a complex social phenomenon which is one of the most intricate aspects of human culture. Second, law is also a normative social practice: it guides human behavior, giving rise to reasons for action. An attempt to explain this normative, reason-giving aspect of law is one of the main challenges of general jurisprudence.

Features of law include:

Letter of the Law

A law is a written order – a set of instructions, or software – that provides directions for human behavior.

Spirit of the Law

The purpose or intent is termed the “spirit of the law”. In other words, laws are tools that are intended to be useful.

Sanctions

Laws are the forcible means by which a government achieves its goals; they are coercions, restrictions, prohibitions, or commands for action.

Costs

All laws consume and divert resources. To pay the direct costs of laws, governments create and enforce additional laws to raise revenue through sanctions such as taxes, fees, and fines.

Side Effects

Laws, like all other human creations, may or may not be useful, but they always produce unintended side effects. The parameters used to measure the side effects of laws are the human rights, living standards, and quality of life standards of the people.

Performance

The performance of a law is, simply, the measure of the problem-solving benefit of the law minus the measured sum of its burdens (restrictions, costs, and side effects). For a democracy, the only valid laws are those whose net benefit is positive.

Fallibility

Laws are the product of human creative efforts and are therefore fallible. Fortunately, laws, like every other human-made product, may be improved by design changes (amendments) and they may be repealed when they are found to be less than useful.

In a democracy, the objective of laws is to serve the best interests of the people and reflect their highest aspirations. Functions and purposes of law depend on the nature of the state. In a democracy, the ultimate purpose of laws is to solve or mitigate the societal problems that degrade or threaten to degrade the liberty and well-being of the people, i.e., the public good.

Some of the major purposes of law are:

 to deliver justice;

 to provide equality and uniformity;

 to maintain impartiality;

 to maintain law and order;

 to maintain social control;

 to resolve conflicts;

 to bring orderly change through law and social reform.

However, at present, in a welfare and democratic state, there are several important functions of law. Scientists differentiate between the macro and micro functions of law. The macro functions of law cover law and public order, political order, social order, economic order, international order, and moral order. The micro functions of law include defining the limits of acceptable behaviour, the consequences of certain forms of behaviour, processes for the transaction of business and other activities, etc.

There are also some secondary and indirect functions of the law. They include the determination of procedures for changing the law and the regulation of the operation of law-applying organs.

In any society there are many different sources of law. They include constitutions, legislatures, executives, judiciaries, administrative agencies and international organizations.

Some laws are written in the country’s Constitution; others are passed by the legislature (usually a parliament or congress); others come from long social traditions.

The Constitution of Ukraine is the principal source of Ukrainian law and has the highest legal force. The norms of the Constitution of Ukraine are norms of a direct effect.

Forms of law are various nowadays. Written law is the law prescribed by a body having law making power, and is called so because the permanent memorial of it is in writing.

The unwritten or common law is the law declared by the judges in the decision of litigated cases.

A code is a statutory enactment which assumes to put the law of any particular subject in a complete written form, or which assumes to embody the entire law of the jurisdiction in orderly shape.

The decisions of the courts, with the opinions sustaining them, are preserved in books called judicial reports. The opinions are published in books termed judicial reports and they constitute one of the most important sources from which the lawyer obtains his estimate of the law.

Text books, encyclopedias, digests, derive their information from the statutes and reports and constitute great helps in finding the law.

Part 2. Legal Norms

Categories in focus:

A) Legal norms

B) Legal norms characteristics

C) Types of legal norms

Norms are concepts (sentences) of practical import, oriented to effecting an action, rather than conceptual abstractions that describe, explain, and express. Common normative sentences include commands, permissions, and prohibitions; common normative abstract concepts include sincerity, justification, and honesty. A popular account of norms describes them as reasons to take action, to believe, and to feel.

The norms are in fact some rules, some universal statements which incorporate the particulars and which regulate human conduct in a given action. The norms influence people’s attitudes, decisions, goals and aspirations.

Legal norms make up the legal order which is a component of social order, its nucleus, having the fundamental role of maintaining the balance of society as a whole, of ensuring the essential human rights and the proper functioning of state institutions.

As a rule of social conduct, the legal norm concerns only relationships between people. The legal norm has a complicated structure whose core is the rule of conduct, with other elements that distinguish its peculiarities centered round it. The legal norm has the task to regulate not a single special relation, but a category of relations. Legal relations cannot be established within the animal kingdom, or between humans and objects.

Since the legal norm is the basic element of the entire system of law, it has all the characteristic features of law as a particular social phenomenon.

The legal norm is a relatively independent element with a number of specific features, an element which materializes and goes deeply into our views about law, its essence and its content, about the mechanism of regulating social relations, being also a component and a primary element of the system of law.

Legal norms are general and bilateral in nature. First and foremost we consider that the legal norm expresses an impersonal, general, typical, abstract rule of conduct, applicable to an unlimited number of situations. The legal norms prescribe a conduct, a standard behavior destined to a generic individual. It addresses its recipients in a diffuse and impersonal manner.

The fact that the norm is impersonal does not mean that it is inapplicable to persons, but it expresses its quality to refer to an indeterminable number of situations and people.

In legal literature, legal principles are considered to be legal norms, general legal norms, legal values, etc. In fact, legal principles are just legal norms that ignore specific legal facts. According to different criteria, Legal principles (or norms) can be classified into:

1. Basic legal principles widely accepted as just (jus) and law as lex. One of the basic legal principles is “proportionality”.

2. Composite Legal Principles: various jurisdictions, doctrines and legal professions.

3. Complex Legal Principles: Arbitrage is a complex legal principle. Arbitrage is “portable” because it is common across jurisdictions, doctrines and legal professions.

To conclude, a legal norm is impersonal, general, abstract rule of conduct, applicable to an unlimited number of situations. Characteristic features of the legal norm help define a legal norm as a binding, general, typical and impersonal rule of behaving (conduct), established or recognized by the public authority in order to protect, strengthen, develop and promote social relations.

**THEME 2. THE LAWMAKING PROCESS**

Categories in focus:

A) Lawmaking in the legislature

B) The relationship between legislative and executive power

C) Lawmaking by the executive.

D) Lawmaking by judges

E) Lawmaking by political parties

One definition is that law is a system of rules and guidelines which are enforced through social institutions to govern behaviour.

This lesson is about the making of those rules that are called laws or that have the force of law. Our primary emphasis will be on how laws are made in legislatures, but our functional approach helps us recognize that other governmental and even extragovernmental bodies also make rules or rulings that have the force of law. Thus, we will also consider how executive and judicial agencies make law and will end with a few words about how laws are sometimes shaped by extragovernmental bodies.

The polity for which a particular law is made may range from the smallest village to the nation-state. At the lowest level are local ordinances, sometimes referred to collectively as municipal law.

Laws are made at all levels of government, and rules with the force of law can be made by any branch of government. We think of the legislative branch as the lawmaking branch of national government, and quite rightly so, thus, the work of legislatures will be the central topic of this lesson. However, legislators are not our only national lawmakers, rules issued by executives also have the force of law, although they may be called by a different name. Such a rule is often called a decree but may also be called an ordinance, an executive order, or a decree law.

LAWMAKING IN THE LEGISLATURE

A legislature is an institution in which individuals gather with the primary purpose of making laws. It need not be an elected body, although it often is. It need not be a permanent body convened periodically - sometimes it is, sometimes it is not. A legislature is established every time a tribal chief, king, military commander, or the highest potentate in a theocracy summons some of the elders, nobles, senior officers, or higher clergy (respectively) to help work out policy on a matter of politywide concern. When the governor of a colonial territory appoints a few trusted individuals to form a legislative council, as was the British practice in the heyday of empire, that too is a legislature.

The more familiar form of a modern legislature, however, is a permanent, periodically convened institution composed of officials elected for a limited term for the express purpose of making laws, such as the U.S. Congress, the British House of Commons, the Japanese Diet, The National Assembly of the Federal Republic of Nigeria, National Assembly of Zambia, The Parliament of Cameroon and The Verkhovna Rada of Ukraine. Even in this category there are numerous variations. The legislatures relationship to the executive branch and the individual legislators' relationships with their constituents vary significantly from polity to polity. Other differences include the number and nature of the individual houses of the legislature, the power of committees, and the customs and mores of the particular legislature.

THE RELATIONSHIP BETWEEN LEGISLATIVE AND EXECUTIVE POWER

Legislative power need not be separate from executive power. Indeed, it seldom is. Just how closely connected they are, and what the balance between them may be, depends on a nations constitution and whether it prescribes a parliamentary system, a presidential system, or a blend of the two. The simplest way to make this distinction clear is to describe each of these three systems in turn.

PARLIAMENTARY SYSTEM. In a parliamentary system, the legislature maintains extremely close bonds with the systems executive leadership and has significant power of its own.

In a parliamentary system the same executive leadership directs the work of the legislature, called parliament and consisting of an upper house and a lower house, and the work of the bureaucracy. The bureaucracy includes all the departments or ministries of government, it is sometimes called the administration. That executive leadership is the cabinet, which is composed of the heads of the departments of government, usually called ministers, occupants of important appointive posts, such as the head of the national security agency, the top leader in the military forces, or an important prelate in a system where church and state are closely intertwined, and the chief executive, usually called the prime minister. The cabinet in a parliamentary system is often called the government, not because it is in fact the entire government but in recognition of the key role it does play.

Where do parliamentary cabinets come from, and what do they do? In the most typical form, the individual members of the cabinet are chosen by the prime minister but must be approved by the lower house. To become prime minister, one must be a leader (usually the top leader) of a political party. If that party wins a majority of the seats in the lower house of the legislature, its senior leader will be asked to try to "form a government." If he or she can win the approval of the lower house of parliament for the cabinet proposed (and if the party has won the majority of seats in the legislature, such approval is virtually assured), then the new government is established and the party leader in question becomes the prime minister. The cabinet may be formed exclusively of members of parliament (who may or may not be allowed to keep their seats in that body), or it may include some persons who have not been elected to any office whatsoever, the more common pattern is for cabinet members to be members of parliament as well.

In a parliamentary system, the person who asks the party leader to try to form a government is the nations monarch or president (often referred to as the head of state). This is the most important role – or at least the most politically powerful role – that a monarch or a president can play in a parliamentary system, the other functions of the head of state are all purely ceremonial. Even in this case, if the party leader leads a party that has indeed won a majority of seats in the lower house, the head of state can only follow a script written by others. Everyone knows that the majority party's leader must be asked to form a government and will succeed in doing so.

Most legislatures have two houses to ensure that different interests – and different principles of representation – will have appropriate arenas of action. Normally the lower house is elected directly by the people, with each representative serving approximately the same number of constituents. Upper houses vary from system to system, but they are usually made up of elder statesmen, elected indirectly (for example, French senators are elected by local and regional government officials) and in office for a longer term than their counterparts in the lower house. In some nations the upper house consists entirely of appointed members and in Great Britain it is composed of "lords," most of whom have little claim to glory beyond the fact that they have inherited titles of nobility. In corporatist states, one or both houses (if there are two houses) will be composed of representatives from different occupations and branches of industry, not from different regions (for example, the Corporazione of Italy under the rule of Benito Mussolini before and during World War II).

In most nations with bicameral legislatures, the lower house is far more powerful than the upper house, the upper chamber deliberates on all bills, but it is easily overridden by the lower house in the event of disagreement. There are, however, exceptions. The U.S. Senate – directly elected by the people since 1913 – has always been at least coequal with the House of Representatives in the exercise of power.

In multiparty parliamentary systems, however, where it often happens that no party wins a majority of the seats, the ceremonial leader may have an opportunity to exercise a very real influence on the course of events. In such a case it is usually still expected that the leader of the party winning a plurality of seats will be given the first chance to form a government, often by asking leading members of various other parties to take posts in the cabinet in order to form a coalition government. If that cabinet cannot win the approval of the lower house, the same person may be asked to try again with a different cabinet, or the leader of another party may be asked to try. Sometimes a nations politics are so fragmented that no single leader is considered dominant over all the others in a particular party, in that case, the job of trying to form an acceptable cabinet may be passed on to someone else in the same party. As a general rule, the more difficult it is to form a government (cabinet) that the lower house will accept, the more power will be exercised by the monarch or president in a parliamentary system, at least during this difficult period. However, even in cases where it is very difficult indeed to form a new government; the ceremonial leader customarily takes the advice of the nations most astute and most powerful politicians in deciding whom to ask next.

Once formed, the new cabinet becomes the center of the entire governmental process in a parliamentary system. It assumes primary responsibility for the formulation of new legislation and accounts for the initiation of most new bills. Government bills (bills proposed by the cabinet) typically have precedence over bills proposed by individual members of parliament. In some systems, individual members are not allowed to introduce certain kinds of bills — for example, those that would require additional expense with no provision for additional revenue. At the same time, it is also the duty of cabinet members to see to it that the bills are properly carried out by the appropriate departments or ministries once they become law.

So far it may appear that once the legislature has approved a cabinet and a government is formed, the ordinary members of parliament will find themselves playing an insignificant role in the making of laws. Such an impression is not correct. Although most bills are initiated by the cabinet and all laws must be carried out through the administrative apparatus the cabinet controls, the members of parliament still have an important role to play in shaping the content of legislation. No bill becomes law without the consent of at least the lower house of the legislature, more commonly, both houses must approve. Furthermore, it is usually possible for the legislature to put an end to the life of any cabinet. The most forthright way of doing so is by calling for a motion of censure or by voting negatively when the government itself calls for a vote of confidence. If a majority of the lower house votes for the motion (or against the government), the government is dismissed — or, in the term more often used, dissolved. However, this procedure normally means not only that the cabinet must resign but also that the members of the lower house will themselves have to face new elections. Since this is not always politically convenient, members of parliament often prefer to accept partial changes to the cabinet, engineered by the majority party's leadership.

A parliamentary system is the very antithesis of a system based on the separation of powers. Even the judicial branch, made up of judges (often, at the highest level, appointed by the prime minister without need for ratification by parliament) and other court officers, is closely linked to the other two branches of government, and sometimes considered part of the administration. In Great Britain, the highest court in the land is a committee of the House of Lords (the "Lords of Appeal in Ordinary"), and even its rulings can be – and have been – overruled by legislation passed by the two houses of Parliament. Since the British House of Lords has the power only to delay legislation, not to veto it and since the majority in the lower house, the House of Commons, commonly votes as directed by the cabinet (unless so unhappy with that body that it helps bring about a dissolution) ultimate power over the judiciary resides in the cabinet in Great Britain as in most other parliamentary systems.

The parliamentary system is, in fact, predicated on keeping the functions of government tightly interwoven. The link between legislative and executive functions is considered so important that one author has referred to it as the "buckle" that holds everything together and makes the system work.

The presidential system is characterized by weak ties between the legislative and executive branches and a shifting balance of power. The presidential system functions quite differently from the parliamentary system. It rests on the assumption that placing too much power in the hands of too few is dangerous to the liberty of citizens. The government is therefore divided, on the principle of the separation of powers, into three branches: legislative, executive, and judicial. Each branch is given a separate domain, a separate source of power (the chief executive and the legislators are elected independently, the highest judges are appointed), and the power to correct the abuses of the others. Under such a system the relationship between the executive and legislative branches, which may and often do come under the control of members of opposing parties, is likely to be contentious and fraught with difficulty. Defenders of this system argue that such conflict is a small price to pay to protect the nation against the tyranny that might arise with more concentrated power. But those who prefer parliamentary government point out that that system permits stronger parties, more frequent elections (when deemed necessary) and, most importantly, more cohesive government.

Whatever side one takes in such a debate, it is important to understand four crucial differences between presidential systems and parliamentary systems: The different sources of executive power, the different roles of the executive in the initiation of legislation, the presence or absence of ceremonial leadership, and the different roles of political parties. Exact procedures vary, but the more usual patterns are as follows.

Source of Executive Power In a parliamentary system, the prime minister is chosen first by a party (as party leader), second by the voters in a particular constituency (as their representative to the lower house of the legislature), third by the ceremonial leader (as a possible head of government), and fourth by the lower house of the legislature (as prime minister in fact). The other members of parliament are chosen by the voters within their constituencies. National legislative elections are always important: they determine the balance of power in both the legislative and executive offices.

In a presidential system, on the other hand, the president is chosen first by a party (as nominee), and second by the voters of the entire nation (as president). The members of the legislature are also chosen first by the parties (as nominees) and second by the voters (as representatives) in elections that may or may not be held at the same time as the presidential election. In any case, the members of the legislature in a presidential system have terms of office different from that of the president and play nor part in his or her selection. Presidential elections are normally considered far more important than legislative elections in a presidential system.

Initiation of Legislation In a parliamentary system, the prime minister and the cabinet can and do initiate legislation. In a presidential system, the president and the members of the administration may initiate new legislation, but only indirectly, working through individual members of the legislature who agree to sponsor such bills. Those bills have no special priority over other bills proposed by the same or other individual members. However, we should not exaggerate the importance of this difference, since in practice the legislative leaders in a presidential system are usually extremely well aware which bills have the backing of the president, and such bills will almost always receive greater and more favorable attention than bills sponsored by ordinary members.

Ceremonial Leadership In a parliamentary system, the ceremonial leader plays a role in establishing the link between executive and legislative powers by calling upon the party leader most likely to gain the approval of the lower house to form a government. The ceremonial leader takes power either by right of birth or by election (but in either case, the choice of that official is far less important than the choices made in legislative elections). In a presidential system, the president is also the ceremonial leader.

Role of Political Parties In a parliamentary system, the political parties choose the candidates for the legislature and choose their own leader in the knowledge that if enough of their legislative candidates are successful, that leader will become the prime minister. They also know that the leader will count on the votes of the successful candidates of the party not only to take office but also to carry out the party's program. This means that the party plays a far more critical role in parliamentary systems than in presidential systems. Furthermore, the constitutional link between executive and legislative power in parliamentary government forces a link between the party's candidates for executive and legislative power. This means a more unified party, better able to maintain party discipline in the legislature, and thus better able to combine legislative and executive power in implementing its program. In a presidential system, the political parties choose legislative and executive candidates separately, receive little encouragement from the constitutional system to operate in harmony; and are thus more likely to permit undisciplined voting in the legislature. The end result is that although the voters in a presidential system directly elect the president as well as the legislators, choosing between competing candidates from different parties, they do not have the advantage of knowing that strong and well-disciplined parties will hold their successful candidates responsible to the program on which they campaigned.

The combined effect of these four differences between a presidential system and a parliamentary system is to make the ties between executive and legislative power much looser in a presidential system. Looser ties in turn tend to leave the determination of which branch is more powerful to other, nonconstitutional factors, which vary from time to time and from nation to nation. The degree of the nations need for rapid and forceful decision making from its executive, and/or for personal strength or popu¬larity from the occupants of its different offices, thus assume much greater significance in determining the distribution of power in presidential systems than in parliamentary systems. In times like the present, presidential systems lead to greatly strengthened executive branches, yet the legislative branch may retain enough power to block and frustrate the most powerful president while lacking the internal unity and constitutional authority to take power on its own.

THE PRESIDENTIAL-PARLIAMENTARY SYSTEM is characterized by strong ties between the legislature and the executive and a weak legislature. A constitutional system that has become increasingly common in recent years not only in Europe but in several of the new African states, it is a blend of the presidential and parliamentary systems. At first glance, this system looks very much like a parliamentary system. A president chooses a prime minister, who must win the approval of the legislatures lower house for a cabinet. However, several key differences weaken the power of the legislature while maintaining a strong bond between the two kinds of power. The net result is a much stronger executive.

The first essential difference between a parliamentary system and a presidential-parliamentary system (sometimes referred to as a quasipresidential system) is that the president has the power to appoint anyone at all as prime minister and to remove that person at will. The prime minister need not be a member of parliament, need not be a leader of a major party, and in fact need not even be a member of a political party. The prime minister forms a cabinet, which must be approved by the legislature, but again, cabinet members need not be members of parliament or leaders or members of political parties. It is normal in such a system for the president to be elected directly by the people, the prime minister and cabinet members need not have been elected at all. Such a system permits the president to become a very active player in the game of ministerial musical chairs that takes place when parliamentary cabinets falter and political support declines.

The constitution of a quasipresidential system may also give the president the right to name the highest judges, rule the nation directly during states of emergency, and declare when such a state of emergency exists. These supplementary powers may or may not require the signature of the prime minister, because that officials tenure in office is subject to the will of the president, little restraint on the presidents power is implied by such a stipulation in any case. Clearly, in such a system the president is not a ceremonial leader but rather the most powerful figure in the government. But the chief executive's power is not unlimited. The prime minister retains the important powers of setting the governments daily agenda and oven seeing both the formulation and the execution of policy — it is the prime minister who plays the most active role, but that role must be played in a way that is satisfactory to the president, to whom the prime minister reports and who has the power to remove him or her from power.

A more serious potential check on the powers of the president rests in the political parties and their elected representatives, particularly if a party other than the president’s party gains control of the legislature. In that case, a united and determined majority, following party discipline, may refuse to approve the cabinet (including the presidents choice for prime minister) until one is appointed that will act in accordance with its will.

The bonds between executive and legislative powers remain strong, but they now serve to hold together the unequal partners of a greatly strengthened executive and a greatly weakened legislature.

LAWMAKING BY THE EXECUTIVE

The lawmaking powers of formal legislatures have been progressively eroded in many polities. In some cases legislatures have been devised from the outset to serve only as rubber stamps for decisions made by the nations leader or leaders. In others, the shift to executive lawmaking has been more subtle, more gradual, and less complete.

Where legislatures serve merely to formalize decisions made elsewhere about the laws that will govern the citizens of the polity, it is important to find out where laws are really being made and exactly what procedures are being followed. In some polities it is very clear that laws are effectively being made by the chief executive. It is almost part of the definition of charisma that the charismatic leader will have the final word (and sometimes the first and only word as well) on all matters of importance. Hereditary rulers have traditionally felt free to issue new and binding commandments in the form of law, with or without the advice of others. But even modern constitutions may be written to give a particular executive carte blanche in the making of laws. In other systems, dictatorial takeover has often been the result of the military acting on its own to stage a coup and set up a ruling junta (team of leaders), which then makes all policy decisions by authoritarian means. In other nations, the military has been effective in aborting or reversing coups d'etat that threaten legislative control of the lawmaking process.

Legislatures do not always lose to executive dominion, but neither do they always maintain their powers even when they may appear to do so. In some polities, a pretense may be maintained that lawmaking is the job of the legislature, but in practice that body has progressively allowed the executive branch a larger and larger role in the exercise of that function. Such delegation of the lawmaking power may be overt and deliberate, taking place through formal processes and at a specified point in time. The U.S Congress, for example, has formally established independent regulatory commissions and given them the right to issue rulings with the force of law.

In other cases, the delegation of power may take place slowly, almost accidentally, emerging in response to changing circumstances and the strength or weakness of particular leaders and particular institutional constraints. However, legislators do sometimes have second thoughts about the wisdom of giving so much of their own function over to officials formally responsible for carrying out, not making, the nations laws.

Do legislators best serve those who elected them by handing over their powers to presumably more efficient executives in times of national danger? Certainly the practice is fraught with peril; it was, after all, the German parliament that gave Adolf Hitler his unlimited powers. Of course it is true that legislative kowtowing has seldom been so extensive or had such dire results, but still it is important to remember that a nations legislature is the one arena where representatives of all interests can be expected to meet as equals, struggle to find compromises, and formulate policy acceptable to all. The damage done to the political process by casual self-abnegation of those rights can never be deemed inconsequential.

LAWMAKING BY JUDGES

When rueful legislators do attempt to repossess the powers they have allowed others to usurp, they may well find it necessary to turn to a third branch of government, the judiciary, to adjudicate disputes that arise when they attempt to rectify what now appear to them to have been mistaken delegations of their powers. Similarly, embattled executives may seek judicial endorsement for maintaining powers they have become accustomed to exercising or to keep legislatures from invading what appear to them to be constitutionally protected executive functions.

Whichever side is the plaintiff, the ironic effect is likely to be that the judiciary itself becomes seriously involved in the making of laws.

In more recent constitutions, the power of judicial review is explicitly included. The Japanese constitution, for example, gives the Supreme Court of Japan the "power to determine the constitutionality of any law, order, regulation or official act." But in other nations, judges have no place at all in lawmaking. They are expected to assume that all legislation is constitutionally correct and then simply to adjudicate disputes that arise.

LAWMAKING BY POLITICAL PARTIES

In nations where legislators meet infrequently, conduct their work in remarkable harmony or even in unanimity, and are themselves not well-known public figures (or are far better known for their performance in other roles in the political system), it is likely that laws are being written, but not made, in the legislature.

In such cases, where the legislature is obviously merely rubber-stamping decisions made elsewhere, the problem is to find out where the lawmaking power truly resides. The first place to look, as already noted, is in the executive offices and often enough the search can end right there. Sometimes, however, the chief executives themselves are simply carrying out the wishes of another powerful body, the ruling political party.

At first glance, it may seem inappropriate and even extraconstitutional for a party to be the source of a nations legislative agenda. But in fact a strong defense for party government can be made. Suppose you lived in a system where political parties awarded their nominations only to candidates who were pledged to support the party program. You would have the advantage of knowing not only exactly what the candidates running in your constituency stood for but also what it would mean if the various candidates of a particular party won a majority of the seats in the legislature. It would mean that the program of that party would be carried out and that the business of government could be carried forward relatively smoothly, with a minimum of interparliamentary squabbling and rancor. Furthermore, it would mean that if the program did not work to your satisfaction you could hold the elected representatives of that party, and the party itself, accountable, and you could vote for the candidates of a different party next time. What is wrong with that?

But party government is, at least in part, extraconstitutional government. It means that the decisions on new laws are made outside the legislature, in the conferences of the party as it decides on the content of its program. If the party itself is open and democratically organized, party government can mean the broadest possible democratic participation in the work of government — with citizens joining the local branches of the party they prefer and taking meaningful part in the formulation of issues and the nomination of loyal candidates. But if the party is closed and elitist, party government can make a mockery of any representative pretenses in a nations constitutional system. Effective power will be exercised by an unelected few behind closed doors at party headquarters rather than by the elected many in the open forum of a legislative body. It all depends on the nature of the party itself.

The danger of nonrepresentative and nonaccountable party government is clearly greatest in single-party systems. In such systems, still found in the remaining communist states (e.g., China, Cuba), key decisions on new legislation are made in the top ruling body of the party. Although the members of that body are formally elected by the second-highest party body, the Central Committee, the elections are normally controlled by a narrow elite and the flow of power is definitely from the top down. Lower- level organisms of the party serve to educate party members about the necessity and desirability of the new policies, not to discover and reflect popular opinion, and the members in turn play the same educational role in the population at large. The laws thus made may or may not be made in the interests of the people governed, but they are certainly not made by those people under existing law.

SUMMARY AND CONCLUSION

Oliver Wendell Holmes once said, "When I think of the law, I see a princess mightier than she who once wrought at Bayeux, eternally weaving into her web dim figures of the ever-lengthening past – figures too dim to be noticed by the idle, too symbolic to be interpreted except by her pupils, but to the discerning eye disclosing every painful step and every world-shaking contest by which mankind has worked and fought its way from savage isolation to organic social life.

As Justice Holmes's compelling imagery suggests, the law never exists ab ovo (a useful Latin term meaning "from the egg" – that is, as if with no other beginning) but is made – and remade – in all kinds of places, for all kinds of purposes. Furthermore, contrary to Holmes (who was, after all, making an address to a bar association dinner and was not above flattering his auditors), we have seen that it is not always made by those with the grace and authority of mighty princesses, nor by those who are constitutionally responsible, nor even by those who are responsive to the needs of ordinary citizens.

We have also seen that even when the lawmaking function is exercised predominantly in representative legislatures designed for that purpose, the exact division of labor is likely to vary. There may be one or two houses, specialized or nonspecialized committees, and a host of customs and mores unique to each nation to determine what laws can be made, how, and by whom.

In all probability, however, the right to make a nations laws will not be held exclusively by the legislature but will be shared – to a greater or lesser extent – with others outside that body. The executive almost always plays a role in making as well as executing the law, and judges, party leaders, religious authorities, corporation heads, and military chiefs of staff may also feel obliged to join the work of lawmaking when the circumstances make it possible for them to do so.

Furthermore, when legislative power is shared with the executive, the balance of power between the two branches differs according to whether it is a democratic or a nondemocratic system. In a democratic system, it makes a great deal of difference whether we are talking about a parliamentary system, where power may be shared fairly equally, a presidential system, where power is likely to shift back and forth between the two, or a presidential-parliamentary system, where the executive tends to take and keep the upper hand. In all three such systems the question of who shall make the law is decided in part permanently and deliberately, mandated by constitutional provision, and in part temporarily and almost accidentally, as legislators delegate others to perform tasks that were originally theirs – or simply allow such powers to drift into others' hands. In nondemocratic systems, on the other hand, legislators may share the right to make a nations laws reluctantly and resignedly – or even give up such rights altogether – when an autocratic or oligarchic executive forcibly usurps powers that do not constitutionally belong to that branch.

**THEME 3. THE LAWMAKING PROCESS IN UKRAINE**

Since the adoption of the constitution in 1996, Ukraine has mostly been a presidential-parliamentary republic. The 1996 president-parliamentary constitution was revised through amendments into a premier-presidential system in the wake of the Orange Revolution 2006-2010. These amendments were then annulled by the Yanukovych regime in October 2010 and the president-parliamentary system was once again in force from 2010 until 2014. Following the overhaul of the Yanukovych regime in early 2014, and the subsequent election of Poroshenko as new president in May 2014, the president-parliamentary system was again revoked. So, Ukraine is a premier-presidential republic.

In 1996-2005 and 2010-2014, the president had the central role in forming (and dismissing) the government. Together with broad formal and informal powers, this made him arguably the most powerful figure in Ukraine. The constitutional reform of 2004 (cancelled in 2010 by President Yanukovych and restored by the parliament in 2014) has seemingly changed the distribution of power within the executive by making the government accountable solely to the parliament, except for the defence and foreign affairs.

The Head of the State is the President of Ukraine (Art. 102). He is the guarantor of the state sovereignty, territorial integrity of Ukraine, adherence to the Constitution of Ukraine, human and civil rights and freedoms. The President of Ukraine has the right to veto laws adopted by the Verkhovna Rada of Ukraine with their subsequent return for repeat consideration by the Verkhovna Rada of Ukraine.

The President is elected by Ukrainian citizens once in five years by secret ballot on the basis of universal, equal and direct suffrage. The President of Ukraine can be a Ukrainian citizen who is aged thirty-five, has the right to vote, has been residing in Ukraine for the past ten years before the day of the election and speaks the official state language. One and the same person cannot take the office of the President of Ukraine for more than two subsequent terms.

The highest body of the executive power is the Cabinet of Ministers. The Cabinet of Ministers of Ukraine is responsible to the President of Ukraine and is under the control of and accountable to the Verkhovna Rada of Ukraine.

The Cabinet of Ministers of Ukraine includes the Prime-Minister of Ukraine, the First Vice-Prime-Minister of Ukraine, three Vice-Prime-Ministers of Ukraine, and ministers. The prime minister of Ukraine is appointed by the Verkhovna Rada of Ukraine after the giving of President of Ukraine. A candidature for setting on position of prime Minister of Ukraine is brought in by President of Ukraine on proposal of coalition of deputy factions in the Verkhovna Rada of Ukraine, formed in accordance with the article 83 of Constitution of Ukraine, or deputy faction, which most from constitutional composition of the Verkhovna Rada of Ukraine people’s deputies of Ukraine enter in the complement of.

Minister of Defense of Ukraine and Minister of Foreign Affairs of Ukraine are appointed by the Verkhovna Rada of Ukraine after the giving of President of Ukraine,

other Cabinet Ukraine ministers are appointed by the Verkhovna Rada of Ukraine after the giving of prime minister of Ukraine. (Art.114). Resignation of the Prime-Minister of Ukraine results in the resignation of the entire Cabinet of Ministers of Ukraine. Executive power in oblasts and regions is exercised by local state administrations. The composition of local state administrations is formed by Heads of local state administrations. Heads of local state administrations are appointed and dismissed by the President of Ukraine upon the suggestion of the Cabinet of Ministers of Ukraine. While implementing their authorities, Heads of local state administration are accountable to the President of Ukraine and the Cabinet of Ministers of Ukraine, are subordinated to and supervised by bodies of executive power at a higher level. Local state administrations are subordinated to and supervised by councils on the part of authorities delegated thereto by relevant regional or oblast councils. Local state administrations are subordinated to and supervised by bodies of executive power at a higher level.

The sole body of legislative power in Ukraine is the Parliament — the Verkhovna Rada of Ukraine. The constitutional composition of the Verkhovna Rada of Ukraine consists of 450 People's Deputies of Ukraine who are elected for a five-year term on the basis of universal, equal and direct suffrage, by secret ballot. A citizen of Ukraine who has attained the age of twenty-one on the day of elections, has the right

to vote, and has resided on the territory of Ukraine for the past five years, may be a People's Deputy of Ukraine.

People's deputies of Ukraine may voluntarily unite themselves into deputies' groups or factions with no less than 15 members. Deputies' groups are formed both on a party and a non-party basis. Deputies' groups formed on party basis are called 'factions'. Non-party deputies may join a faction if they support the program of relevant party. Deputies' groups formed on a non-party basis unite deputies who share the same or similar views of national, social and economic development. In current Verkhovna Rada of Ukraine there are 6 factions: Faction of the PARTY “PETRO POROSHENKO BLOC” – 135 members, Faction of the Political party “PEOPLE’S FRONT” – 81 members, Faction of the Political party “Opposition Bloc” in the Verkhovna Rada of Ukraine of the eighth convocation – 43 members, Faction of the Political party “SAMOPOMICH” Union” – 25 members, Faction of Oleh Liashko Radical Party – 21 members, Faction of the Political party the All-Ukrainian Union “Batkivshchyna” in the Verkhovna Rada of Ukraine – 20 members; 2 groups: Group “People’s Will” – 19 members, Group "Party "Revival" – 24 members and 55 Non-affiliated People's Deputies.

The right to adopt the laws in Ukraine belongs to the Verkhovna Rada. The laws have the highest legal force in the State. The Article 92 of the Constitution establishes the areas where the relations are governed exclusively by the laws of Ukraine.

The Verkhovna Rada of Ukraine confirms the list of Committees of the Verkhovna Rada of Ukraine, and elects Chairmen to these Committees. The Committees of the Verkhovna Rada of Ukraine perform the work of legislative drafting, prepare and conduct the preliminary consideration of issues ascribed to the authority of the Verkhovna Rada of Ukraine.

According to the Constitution, the President, the Members of Parliament, and the Cabinet of Ministries of Ukraine have the right of the legislative initiative (Article 93).

Decisions of the Verkhovna Rada of Ukraine are adopted exclusively at its plenary meetings by voting. Voting at the meetings of the Verkhovna Rada of Ukraine is performed by a People's Deputy of Ukraine in person. The Verkhovna Rada of Ukraine adopts laws, resolutions and other acts by the majority of its constitutional composition, except in cases envisaged by the Constitution.

The Chairman of the Verkhovna Rada of Ukraine signs a law and forwards it without delay to the President of Ukraine. Within fifteen days of the receipt of a law, the President of Ukraine signs it, accepting it for execution, and officially promulgates it, or returns it to the Verkhovna Rada of Ukraine with substantiated and formulated proposals for repeat consideration.

In the event that the President of Ukraine has not returned a law for repeat consideration within the established term, the law is deemed to be approved by the President of Ukraine and shall be signed and officially promulgated.

If a law, during its repeat consideration, is again adopted by the Verkhovna Rada of Ukraine by no less than two-thirds of its constitutional composition, the President of Ukraine is obliged to sign and to officially promulgate it within ten days.

A law enters into force in ten days from the day of its official promulgation, unless otherwise envisaged by the law itself, but not prior to the day of its publication.

Only the Verkhovna Rada is entitled to issue the legal acts in the form of laws (zakony). The laws are adopted strictly in compliance with the Constitution of Ukraine.

Secondary Legislation

The next level of Ukrainian legislation is secondary legislation. Different normative acts in the form of decrees, resolutions, orders, etc, issued by the President, the Cabinet of Ministers, the National Bank, the Ministries and other state agencies are adopted on the basis and in realization of the general provisions of laws.

The President of Ukraine issues decrees (ukaz) and directives (rozporiadzhennya).

The Cabinet of Ministers, within the limits of its competence, issues resolutions (postanova) and directives (rozporiadzhennia). All of the documents produced by the highest state bodies are mandatory for execution by every person on the territory of Ukraine.

In pursuance of the laws of Ukraine, the Ministries, state agencies and committees issue resolutions, directives, regulations, instructions and orders that concern their specific sphere of competence.

Local state administrations and local self-government bodies issue resolutions, orders, decisions etc to ensure the observance of laws and freedoms of citizens, and the implementation of development programs and regional budgets.

The acts of the official interpretation as well as court decisions (except for the decisions of European Court of Human Rights) are not formally the source of laws, but they are taken into consideration when a certain case is considered in courts.

Ukraine carries out foreign policy activity. It is a member to different international organizations and agreements. International treaties come into force on the consent of the Verkhovna Rada of Ukraine to be binding. Since that moment they become an important part of national legislation. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution.

All these normative legal acts and international treaties of Ukraine are registered at the Ministry of Justice of Ukraine.

LESSON SUMMARY

1. The sole body of legislative power in Ukraine is the Parliament — the Verkhovna Rada of Ukraine. The constitutional composition of the Verkhovna Rada of Ukraine consists of 450 People's Deputies of Ukraine who are elected for a five-year term on the basis of universal, equal and direct suffrage, by secret ballot.

2. The right to adopt the laws in Ukraine belongs to the Verkhovna Rada.

3. The Committees of the Verkhovna Rada of Ukraine perform the work of legislative drafting, prepare and conduct the preliminary consideration of issues ascribed to the authority of the Verkhovna Rada of Ukraine.

4. According to the Constitution, the President, the Members of Parliament, and the Cabinet of Ministries of Ukraine have the right of the legislative initiative.

5. Decisions of the Verkhovna Rada of Ukraine are adopted exclusively at its plenary meetings by voting.

6. The law adopted by the Verkhovna Rada goes to the President for signing and further official publication. The President may either sign the new law, or use the right of veto and return it to the Verkhovna Rada with propositions for additional considerations. The Verkhovna Rada may overrule the President’s veto by two-thirds of constitutional membership.

7. The law comes into force in ten days after the date of its official publication (unless otherwise stipulated by the law).

8. The next level of Ukrainian legislation is secondary legislation. Different normative acts in the form of decrees, resolutions, orders, etc, issued by the President, the Cabinet of Ministers, the National Bank, the Ministries and other state agencies are adopted on the basis and in realization of the general provisions of laws.

9. All normative legal acts and international treaties of Ukraine are registered at the Ministry of Justice of Ukraine.

**Theme 4: CONSTITUTIONAL LAW. CONSTITUTIONAL LAW OF UKRAINE.**

Categories in focus:

1. The concept of Constitutional law.

2. Types of constitutional law.

3. Constitution of Ukraine: its structure and significance.

4. General principles of the constitutional system in Ukraine.

Part 1

Constitutional Law is the fundamental law of a state that defines the powers of the state, constitutes and delineates the organs of government, and limits governmental powers. In addition to dealing with the organization of state and government, constitutional law also concerns itself with the relationship between government and citizens, more specifically with the rights and privileges of the individual vis-à-vis the state.

Scope and Function. Because of its fundamental character, constitutional law is legally superior to other types of law. Most commonly, constitutional law is laid down in a special, written document or set of documents, a constitution, that is regarded as the supreme law of the land. A constitution almost always contains a special procedure for amendment in order to prevent facile alteration.

• Narrow meaning of a constitution:

A document having a special legal status which sets out the framework and the principal functions of the organs of government within the state and provides for principles and rules by which those organs must operate.

Separation of Powers. The idea of separation of powers plays an important role in delineating the powers of the state and the government. Two variants of this theory of politics can be distinguished: one variant concerns the different branches of government; the other relates to a territorial division of state power.

The first asserts that liberty can be safeguarded only in a political system in which governmental power is divided into three different functional branches – legislative, executive, and judicial. Each of these branches is assigned by different organs that are expected to adhere to their own functions.

The second variant, called division of powers, refers to the territorial division of state power, which has been established in most contemporary states between a central and a local level. In some constitutional systems, national government can be divided into a central and a decentralized level (such as in France, which has a unitary constitution) or between a decentralized level of states or regions and one central organ with limited powers (such as in Switzerland, which has a confederate system).

Bills of Rights and Other Sources. Nations that have written constitutions usually also have an incorporated bill of rights containing basic individual rights, such as freedom of speech and press, freedom of religion and worship, and freedom of association and assembly, among others. These rights aim to protect the individual from state interference.

The constitutional law of a country is not strictly limited to the rules of the constitution; it also encompasses statutes concerning the structure and functions of central and local governments and their relations with the citizens. In addition, it incorporates judicial decisions (particularly those concerning the interpretation of individual rights and privileges), constitutional conventions, and political practice.

Two main types of constitutional law are found around the world, the determining factor being whether the constitution is written or unwritten. Although the United Kingdom is usually cited as the classic example of a state without a written constitution, many other countries, including Israel, New Zealand, Oman, and Saudi Arabia, do not have a basic written document. Such countries do, however, have a number of (written) rules pertaining to the organization of government and the rights of citizens.

The standard distinction between written and unwritten constitutions is therefore of considerable but nevertheless limited use. Another distinction was introduced by the British legal scholar James Bryce in 1884. He identified flexible constitutions, for which the amending process takes place by simple majority, and rigid constitutions, which involve a special amending procedure. According to Bryce's typology, constitutions and constitutional law can change not only through formal procedures but also through judicial interpretation and changes in the relationships among political institutions.

Unwritten and Written Constitutions. Along with its American counterpart, the British constitutional system has been considered the cradle of constitutionalism and an extremely influential model, notably among its former colonies. The sources of British constitutional law are threefold: (1) statutes, such as the Magna Carta (Latin for "the Great Charter"), also called Magna Carta Libertatum (Latin for "the Great Charter of the Liberties") (1215), the Bill of Rights (1689), and the Parliament Act (1911); (2) judicial decisions settling aspects of constitutional practice, such as those concerning the interpretation of rights, among them freedom of speech and of assembly; and (3) conventions, practices, or rules that derive from political processes.

The second major type of constitutional law concerns all those states that have adopted a formal written constitution. In this case, too, a further distinction can be made based on the status of the judiciary. In some systems, constitutions explicitly grant the judiciary the power to strike down legislation that is inconsistent with the constitution. In others the judiciary may interpret the constitution in such a way as to invest itself with the power of constitutional review. An example of the first category is the German system; those of the United States and Norway exemplify the second category.

Constitutional Review. In all systems of constitutional law, the importance of the judiciary in delineating the powers of governments and the scope of individual rights and privileges cannot be overestimated. Three principal models of constitutional review can be identified. In the first, the "diffuse" or "decentralized" model, all the judges and courts of a given country are authorized to act as constitutional judges. Thus when a dispute that depends on a particular law is brought before them, the courts are permitted to consider the validity of the law and validate or reject it. The most well-known example of a diffuse system of judicial review is that of the United States. Its provisions were largely copied by the majority of the former states of the British Commonwealth: Canada, India, Australia, and Ireland. It was also adopted in Japan and, formally, at least, in a number of Latin American nations.

The second, the "concentrated" or "centralized" model, is characterized by the presence of only a single organ to act as constitutional judge. This institution can be either a supreme judicial court or a special constitutional court organized outside of the ordinary judicial hierarchy. The model finds its origins in Austria and was adopted in many continental European states, such as Germany, Italy, France, Spain, and Belgium.

Finally, a third type of system distinguishable on the basis of constitutional review is that in which the judiciary is not authorized (more or less explicitly) to review statutes in light of the constitution. Both the Netherlands and Finland have followed this pattern. Since 1953, however, the Dutch courts have been authorized to set aside any constitutional-law provision that may be deemed incompatible with a rule of international law.

Part 2

Constitution of Ukraine

Constitutions take a special place in the world civilization and play an important role in the political history of every country.

The Constitution of Ukraine is the principal source of Ukrainian law and has the highest legal force. The norms of the Constitution of Ukraine are norms of a direct effect. The laws and other legal acts are adopted on its basis and shall correspondent with it.

The Constitution of Ukraine was adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28 June, 1996 with the amendments and supplements borne by the law of Ukraine from December, 8, 2004 N 2222-IV. The day of its adoption, June 28, is a state holiday – the Day of the Constitution of Ukraine. The Constitution consists of 15 chapetrs and 161 articles dealing with the political, social and economic structure of the Ukrainian State, proclaimed on August 24, 1991. The Act of Declaration of the Independence of Ukraine was approved by a nation-wide vote on December 1, 1991.

The Preamble to Ukraine Constitution is a brief introductory statement of the Constitution's fundamental purposes and guiding principles. It states: The Verkhovna Rada of Ukraine, on behalf of the Ukrainian people - citizens of Ukraine of all nationalities, expressing the sovereign will of the people, based on the centuries-old history of Ukrainian state-building and on the right to self-determination realised by the Ukrainian nation, all the Ukrainian people, providing for the guarantee of human rights and freedoms and of the worthy conditions of human life, caring for the strengthening of civil harmony on Ukrainian soil, striving to develop and strengthen a democratic, social, law-based state, aware of responsibility before God, our own conscience, past, present and future generations, guided by the Act of Declaration of the Independence of Ukraine of August 24, 1991, approved by the national vote on December 1, 1991, adopts this Constitution - the Fundamental Law of Ukraine.

Historical background.

The history of the Constitution in Ukraine starts in the times of Kyivan Rus. The head of the state, Grand Prince Yaroslav Mudryy (the Wise) – established a set of laws that de facto had constitutional force in the 11th century.

And a surprising claim to political history. The world’s first constitution was drafted and introduced in 1710 by Ukrainian Hetman Pylyp Orlyk. The document was aimed at introducing the separation of powers. It outlined the responsibilities and rights of both citizens and government.

It established a democratic standard for the separation of powers in government between the legislative, executive and judiciary branches, an idea perhaps made more famous by Montesquieu’s Spirit of the Laws, which was published in 1748.

During soviet times (1922-1991) Ukrainians were under four different Constitutions, adopted in various times. Until June 8, 1995, Ukraine's supreme law was the Constitution (Fundamental Law) of the Ukrainian SSR (adopted in 1978, with numerous amendments). On June 8, 1995, President Leonid Kuchma and Speaker Oleksandr Moroz (on behalf of the parliament) signed the Constitutional Agreement for the period until a new constitution is drafted.

On February 21st, following the 2014 Ukrainian revolution, the Parliament passed a law that reinstated the December 8, 2004 amendments of the constitution. A total of 386 MPs voted for the law. The document was passed under simplified procedure without any decision of the relevant committee and was passed in the first and the second reading in one voting.

The 2004 Constitution, which was in effect until 2010, limits the presidential powers and broadens those of the parliament and government.

The Constitution of Ukraine confirms the main principles of the state, the rights, freedoms and duties of every citizen. It determines the order of the President elections, elections into the Verkhovna Rada, state symbols, independence and sovereignty of Ukraine.

UKRAINE’S CONSTITUTION CONSISTS OF 15 CHAPTERS:

1. General Principles

2. Human and Citizen Rights, Freedoms and Duties

3. Elections. Referenda

4. The Verkhovna Rada of Ukraine

5. The President of Ukraine

6. The Cabinet of Ministers of Ukraine. Other Executive Bodies

7. The Office of the Prosecutor

8. The Judiciary

9. The Territorial Structure of Ukraine

10. Autonomous Republic of Crimea

11. Local Governments

12. The Constitutional Court of Ukraine

13. Amending the Constitution of Ukraine

14. Final Provisions

15. Transitional Provisions

Chapter I of the Constitution is about the general principles of Ukrainian statehood. Ukraine is a sovereign and independent, democratic, social, law-based state. Ukraine is a Unitarian state, that is, united, indivisible.

All power in Ukraine belongs to the people. The people exercise power directly and through the bodies of state power and local self government. State power in Ukraine is divided into three branches: legislative, executive and judicial. The principle of rule of law is recognized and guaranteed in Ukraine.

The state language of Ukraine is the Ukrainian language. The State ensures the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine. In Ukraine, the free development, use and protection of Russian, and other languages of national minorities of Ukraine, is guaranteed. The State promotes the learning of languages of international communication. The use of languages in Ukraine is guaranteed by the Constitution of Ukraine and is determined by law.

The State promotes the consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.

The state symbols of Ukraine are:

• the State Flag of Ukraine (a banner of two equally-sized horizontal stripes of

blue and yellow);

• the State Coat of Arms of Ukraine (A stylised trident symbol (tryzub) in gold on a background shield of blue.);

• the State Anthem of Ukraine (“The glory and the freedom of Ukraine has not yet died”).

The description of the state symbols of Ukraine and the procedure for their use shall be established by the law adopted by no less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine.

The capital of Ukraine is the city of Kyiv

Human rights and freedoms provided for the citizens of Ukraine.

Under the Constitution every person enjoys and exercises a lot of human rights, such as,

 the right to life,

 the right to respect of his / her dignity,

 the right to dwelling;

 the rights to work,

 education,

 health protection and medical aid,

 social maintenance, etc.

Citizens shall have equal constitutional rights and freedoms and shall be equal before the law. There shall be no privileges or restrictions based on race, skin colour, political, religious and other beliefs, sex, ethnical and social origin, property status, place of residence, linguistic or other characteristics.

The Constitution of Ukraine provides a series of duties for the citizens to carry out such as to protect the surroundings, preserve historical and culture heritage and other national values, defend the Motherland.

The Constitution obliges every person:

 to pay taxes and levies according to the procedure and in amounts established by the law

 to strictly abide by the Constitution of Ukraine and the laws of Ukraine, and not to encroach upon the rights and freedoms, honour and dignity of other persons

The Constitution points out that ignorance of the law does not relieve from legal responsibility

Elections and referendums in Ukraine. The expression of the will of the people is exercised through elections, referendum and other forms of direct democracy

Citizens of Ukraine who have attained the age of eighteen on the day elections and referendums are held, have the right to vote at the elections and referendums

The legal status of the Parliament – the Verkhovna Rada of Ukraine is determined by Chapter ІV. The Verkhovna Rada of Ukraine is the sole body of legislative power in Ukraine. The constitutional composition of the Verkhovna Rada of Ukraine consists of 450 People’s Deputies of Ukraine who are elected for a five-year term on the basis of universal, equal and direct suffrage, by secret ballot.

A citizen of Ukraine who has attained the age of twenty-one on the day of elections, has the right to vote, and has resided on the territory of Ukraine for the past five years, may be a People’s Deputy of Ukraine.

The term of authority of the Verkhovna Rada of Ukraine is five years.

People's Deputies of Ukraine are guaranteed immunity of a deputy. The Verkhovna Rada works in sessions. Each year, regular sessions of the Verkhovna Rada of Ukraine start on the first Tuesday of February and on the first Tuesday of September.

Meetings of the Verkhovna Rada of Ukraine are open. A closed meeting is conducted on the decision of the majority of the constitutional composition of the Verkhovna Rada of Ukraine. Decisions of the Verkhovna Rada of Ukraine are adopted exclusively at its plenary meetings by voting.

The right of legislative initiative in the Verkhovna Rada of Ukraine belongs to the President of Ukraine, the People’s Deputies of Ukraine, and the Cabinet of Ministers of Ukraine.

The Chairman of the Verkhovna Rada of Ukraine signs a law and forwards it without delay to the President of Ukraine.

Within fifteen days of the receipt of a law, the President of Ukraine signs it, accepting it for execution, and officially promulgates it, or returns it to the Verkhovna Rada of Ukraine with substantiated and formulated proposals for repeat consideration.

In the event that the President of Ukraine has not returned a law for repeat consideration within the established term, the law is deemed to be approved by the President of Ukraine and shall be signed and officially promulgated.

Where a law, during its repeat consideration, is again adopted by the Verkhovna Rada of Ukraine by no less than two-thirds of its constitutional composition, the President of Ukraine is obliged to sign and to officially promulgate it within ten days. In the event that the President of Ukraine does not sign such a law, it shall be without delay promulgated officially by the Chairperson of the Verkhovna Rada of Ukraine and published under his or her signature.

A law enters into force in ten days from the day of its official promulgation, unless otherwise envisaged by the law itself, but not prior to the day of its publication.

The legal status of the President of Ukraine

The President of Ukraine is elected by the citizens of Ukraine, on the basis of universal, equal and direct suffrage, by secret ballot for a five-year term.

A citizen of Ukraine who has attained the age of thirty-five, has the right to vote, has resided in Ukraine for the past ten years prior to the day of elections, and has command of the state language, may be elected as the President of Ukraine.

One and the same person shall not be the President of Ukraine for more than two consecutive terms.

Cabinet of Ministers of Ukraine. Other Bodies of Executive Power.

The highest body in the system of bodies of executive power is the Cabinet of Ministers of Ukraine. The Cabinet of Ministers of Ukraine is responsible to the President of Ukraine and is subordinated to and supervised by the Verkhovna Rada of Ukraine. The Cabinet of Ministers of Ukraine includes the Prime-Minister of Ukraine, the First Vice-Prime-Minister of Ukraine, three Vice-Prime-Ministers of Ukraine, and ministers. The prime minister of Ukraine is appointed by the Verkhovna Rada of Ukraine after the giving of President of Ukraine. A candidature for setting on position of prime Minister of Ukraine is brought in by President of Ukraine on proposal of coalition of deputy factions in the Verkhovna Rada of Ukraine, formed in accordance with the article 83 of Constitution of Ukraine, or deputy faction, which most from constitutional composition of the Verkhovna Rada of Ukraine people’s deputies of Ukraine enter in the complement of. Secretary of defence of Ukraine, Minister for foreign affairs Ukraine is appointed by the Verkhovna Rada of Ukraine after the giving of President of Ukraine, other Cabinet Ukraine ministers are appointed by the Verkhovna Rada of Ukraine after the giving of prime Minister of Ukraine. (Art.114). Resignation of the Prime-Minister of Ukraine results in the resignation of the entire Cabinet of Ministers of Ukraine.

Executive power in oblasts and regions, the cities of Kyiv and Sevastopol is exercised by local state administrations. The composition of local state administrations is formed by Heads of local state administrations. Heads of local state administrations are appointed and dismissed by the President of Ukraine upon the suggestion of the Cabinet of Ministers of Ukraine. While implementing their authorities, Heads of local state administration are accountable to the President of Ukraine and the Cabinet of Ministers of Ukraine, are subordinated to and supervised by bodies of executive power at a higher level. Local state administrations are subordinated to and supervised by councils on the part of authorities delegated thereto by relevant regional or oblast councils. Local state administrations are subordinated to and supervised by bodies of executive power at a higher level.

On 2 June, 2016, the Verkhovna Rada of Ukraine adopted amendments to the Constitution of Ukraine and a new Law “On the Court System and the Status of Judges”. The changes are a key milestone in the reform of the Ukrainian judiciary and should improve justice by enhancing the transparency and efficiency of Ukrainian court proceedings. If properly implemented, they will help reduce corruption in Ukraine’s court system by making judges more accountable for their rulings and behaviour.

The constitutional amendments provide for a three-tier court system, disposing of the current four levels of hearings. This is expected to improve the efficiency of the entire litigation process in terms of time, service and quality.

According to Article 124, justice in Ukraine is administered exclusively by the courts. It is not allowed to delegate functions of a court, as well as to appropriate these functions by other bodies or officials. The jurisdiction of courts applies to all legal relations arising within the state.

The amendments create a unified court system under the Supreme Court of Ukraine consisting of one chamber and four courts of cassation (please see the charts above). The new structure does away with essentially three parallel independent superior specialized courts, which will hopefully eliminate the inconsistencies in the application of the law, forum shopping and corruption inherent in the current system. Further, two new courts will be established, designed to consider intellectual property and corruption disputes - the High Specialized Court on Intellectual Property and the High Specialized Anticorruption Court. The place of those in the new system of courts is yet to be clarified.

The amendments are designed to strengthen the independence of judges from political and commercial manipulation. Accordingly:

1. Judges will be henceforth appointed by the President of Ukraine upon nomination by the Supreme Council of Justice, a new state body to be established to replace the current High Council of Justice. The competence to appoint and to remove judges was transferred to the Supreme Council of Justice from the Parliament of Ukraine.

2. Further, the judicial reform laws revoke the so-called probation period of a judge’s first five years in office in respect of newly appointed judges and provide for substantially increased base salaries.

3. At the same time, sitting judges who have been appointed for the 5-year probation period or permanently prior to the coming into force of the new Law “On the Court System and the Status of Judges” will be tested for their fitness for this office in terms of their professional expertise and ethics. Failure to demonstrate such compliance, or refusal to participate in the review process will constitute grounds for dismissal of the respective judge.

The amendments also introduced strict anticorruption rules for judges, whose lifestyles will now be strictly monitored:

1. Each judge will now submit two additional annual declaration forms: (i) on family relations, providing for broad and extensive disclosure of family ties, and (ii) a declaration of integrity, which will be a publicly available document.

2. Furthermore, judges will be now obliged to confirm the legality of the source of their assets. Failure to explain and justify the sources of funds and other assets will be treated as a basis for a judge’s dismissal.

3. Furthermore, the cloak of blanket immunity of judges from any form of prosecution will be lifted; judicial immunity from criminal liability will now be limited to functional immunity only, meaning that a judge is protected from liability resulting from their judicial actions only, while they now can be prosecuted for any other type of offence.

Considering that the new rules also tighten the disciplinary liability of judges, if properly implemented, the new laws should with time significantly improve the quality of the Ukrainian judiciary.

The amendments to the Constitution also attempt to regulate representation before the courts. Currently, any duly authorised individual may represent any person in court except for the criminal proceedings. From 1 January 2017 only state-licensed advocates are allowed to represent clients in cassation matters, from 1 January 2018 in appeal matters and in courts of first instance from 1 January 2019.

Much remains to be done to properly implement this reform, starting with raising the overall quality and accountability of advocates.

Ukraine currently does not have a self-governing law society responsible for and dedicated to the training, licensing, disciplining and professional development of lawyers. It is not clear if all of Ukraine’s lawyers will become “advocates” under laws still to be developed. Strict criteria are necessary for entrance into the advokatura, involving oversight and the enforcement of stringent codes of professional conduct. While these mechanisms still remain to be established, the broad outlines of this system have been clear for some time, and it is hoped that the political will finally exists to properly implement them. These changes should then have an overall positive impact on the justice system, providing the citizen with access to high quality legal services and representation.

Changes to the functions of the prosecutor’s office.

Founded in 1937 as a repressive body of the state, the state prosecutor’s office, or Prokuratura, in Soviet times was responsible for overseeing the legality of actions of all state bodies, including the courts. Most of these functions carried over into the legal framework of independent Ukraine, where many of the Prokuratura’s functions, in fact, were expanded. Given the lack of accountability connected with its expansive functions of oversight, investigation and prosecution, the Prokuratura has come under widespread criticism for the way these powers were exercised.

Now, for the first time since the collapse of the Soviet Union and Ukraine’s independence, amendments to the Constitution significantly change the competences of the state prosecution office. The amendments abolish the wide general supervisory authority of the prosecutor’s office and limit its functions to the following:

(1) Organization and leadership of pre-trial investigations;

(2) Support of public prosecution in the courts; and

(3) Representation of the state’s interest in the courts, according to the law.

While the leading role of procedural supervision envisaged in the amendments is worrisome, overall, the proposed amendments should help decrease the corruption and abuse of powers in criminal cases. They will also hopefully bring Ukrainian legislation and practice with respect to the protection of rights in criminal prosecutions in line with provisions of the Convention on Human Rights and the practice of the European Court on Human Rights.

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The amendments also provide that the many of the current functions of the Prokuratura will be transferred to other state authorities, some of which are only in their nascent stages of development. In particular, the function of operational pre-trial investigation is to be vested, inter alia, in the National Anti-corruption Agency and the State Investigation Agency.

The amended Constitution of Ukraine now provides for access to the Constitutional Court of Ukraine to all individuals and companies where there are grounds to claim that a final court judgment contradicts the Constitution. A complaint may only be filed after all other remedies have been exhausted in the regular Ukrainian courts.

This amendment may significantly improve access to and the quality of justice, hopefully obviating the need for parties to seek their remedies in international tribunals.

**THEME 5. HUMAN RIGHTS**

Categories in focus:

A) Human rights fundamentals

B) Rights, freedoms and duties of a citizen

C) Legal mechanisms to protect human rights

HUMAN RIGHTS are standards that allow all people to live with dignity, freedom, equality, justice, and peace. Every person has these rights simply because they are human beings. They are guaranteed to everyone without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Human rights are essential to the full development of individuals and communities.

 Many people view human rights as a set of moral principles that apply to everyone.

 Human rights are also part of international law, contained in treaties and declarations that spell out specific rights that countries are required to uphold.

 Countries often incorporate human rights in their own national, state, and local laws.

 Human rights are inalienable: you cannot lose these rights any more than you can cease being a human being.

 Human rights are indivisible: you cannot be denied a right because it is "less important" or "non-essential."

 Human rights are interdependent: all human rights are part of a complementary framework.

To violate someone’s human rights is to treat that person as though she or he were not a human being, advocate human rights is to demand that the human dignity of all people be respected.

In claiming human rights, everyone also accepts the responsibility not to infringe on the rights of others and to support those whose rights are abused or denied.

HUMAN RIGHTS INCLUDE

NATURAL, SOCIAL, CIVIL AND POLITICAL RIGHTS.

 NATURAL RIGHTS are those rights with which an individual is supposed to have been born.

 SOCIAL RIGHTS include the right to some degrees of economic welfare and security and the right to live the life of a civilized being according to standards prevailing in the society.

 CIVIL RIGHTS are those rights which are necessary for the freedom/liberty of the individual. They include the right to life and personal liberty, right to freedom of speech, expression and thought, right to own property, right to enter into contract, right to equality before law and equal protection by law. Equality before law means absence of special privileges; equal protection of laws implies equals should be treated equally.

 POLITICAL RIGHTS include the right to vote and the right to contest election.

Why are Human Rights Important?

Human rights reflect the minimum standards necessary for people to live with dignity. Human rights give people the freedom to choose how they live, how they express themselves, and what kind of government they want to support, among many other things. Human rights also guarantee people the means necessary to satisfy their basic needs, such as food, housing, education, so they can take full advantage of all opportunities.

Finally, by guaranteeing life, liberty, equality, and security, human rights protect people against abuse by those who are more powerful.

The modern international human rights catalogue was declared by the Universal Declaration of Human Rights in 1948. It implemented the great achievements of humanitarian ideas, based on the European values that acquired universal importance in the modern world. The Declaration consists of a preamble and thirty articles. Human rights and freedoms that were formulated in the Universal Declaration were also developed and enhanced in other international and legal human rights acts. All of them have gained universal status, which was accepted as an axiom.

At least 90 National Constitutions that were adopted after 1948 contained a list of fundamental rights which either repeated the regulations of the Declaration, or were included into Constitutions under its influence. Member states expressed their willingness to follow the standards of the Universal Declaration.

The Universal Declaration of Human Rights (UDHR) was the first international document that spelled out the “basic civil, political, economic, social and cultural rights that all human beings should enjoy.”

The declaration was ratified without opposition by the UN General Assembly on December 10, 1948.

When it was adopted, the UDHR was not legally binding, though it carried great moral weight.

In order to give the human rights listed in the UDHR the force of law, the UN drafted two treaties,

 the International Covenant on Civil and Political Rights (ICCPR)

 the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The division of rights between these two covenants is artificial, reflecting the global ideological divide during the Cold War. Though politics prevented the creation of a unified treaty, the two covenants are interconnected, and the rights contained in one covenant are necessary to the fulfillment of the rights contained in the other. Together, the UDHR, ICCPR, and ICESCR are known as the International Bill of Human Rights. They contain a comprehensive list of human rights that governments must respect, protect, and fulfill.

Human Rights Outlined in the International Bill of Rights

The right to equality and freedom from discrimination

The right to life, liberty, and personal security

Freedom from torture and degrading treatment

The right to equality before the law

The right to a fair trial

The right to privacy

Freedom of belief and religion

Freedom of opinion

Right of peaceful assembly and association

The right to participate in government

The right to social security

The right to work

The right to an adequate standard of living

The right to education

The right to health

The right to food and housing

Who is Responsible for Upholding Human Rights?

Under human rights treaties, governments have the primary responsibility for protecting and promoting human rights. However, governments are not solely responsible for ensuring human rights. The UDHR states: “Every individual and every organ of society … shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.” This provision means that not only the government, but also businesses, civil society, and individuals are responsible for promoting and respecting human rights.

When a government ratifies a human rights treaty, it assumes a legal obligation to respect, protect, and fulfill the rights contained in the treaty. Governments are obligated to make sure that human rights are protected by both preventing human rights violations against people within their territories and providing effective remedies for those whose rights are violated. Government parties to a treaty must do the following:

Governments must not deprive people of a right or interfere with persons exercising their rights. For example, governments can:

 Create constitutional guarantees of human rights.

 Provide ways for people who have suffered human rights violations by the government to seek legal remedies from domestic and international courts.

 Sign international human rights treaties.

Governments must take positive action to facilitate the enjoyment of basic human rights. For example, governments can:

 Provide free, high-quality public education.

 Create a public defender system so that everyone has access to a lawyer.

 Ensure everyone has access to food by funding public assistance programs.

 Fund a public education campaign on the right to vote.

Governments must prevent private actors from violating the human rights of others. For example, governments can:

 Prosecute perpetrators of human rights abuses, such as crimes of domestic violence.

 Educate people about human rights and the importance of respecting the human rights of others.

 Cooperate with the international community in preventing and prosecuting crimes against humanity and other violations.

How do Rights Become Law?

International human rights law provides an important framework for guaranteeing the rights of all people, regardless of where they live. International human rights law is contained in many different types of documents, including treaties, charters, conventions, and covenants. Despite the different official names, these documents are all considered treaties and have the same effect under international law: countries that ratify a treaty are legally obligated to protect the rights it describes.

THE FIRST REGIONAL DOCUMENT WAS THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS that was adopted on November 4, 1950 (came into effect on September 3, 1953). The preamble of the European Convention notes that «the governments of European countries, which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration». The European heritage organically included the whole set of universal human rights and freedoms.

THE AMERICAN CONVENTION ON HUMAN RIGHTS was adopted in 1969, it also confirmed the intent to consolidate the system of individual liberty and social justice based on respect for human rights in its hemisphere within the framework of democratic institutions. There is no doubt that spiritual and historical heritage — the US Declaration of Independence, 1776 and Bill of Rights, 1791, had an impact on the nature of this document.

THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS (June 26, 1981) makes special mention of the merits of historical traditions and values of African civilization, which must be reflected in the formation and substance of the human and peoples’ rights concept.

THE ISLAMIC DECLARATION ON HUMAN RIGHTS was adopted in 1990; THE ARAB CHARTER ON HUMAN RIGHTS was adopted by the Council of the League of Arab States in 1999.

As seen from texts of the regional documents, the heritage and historical traditions of the countries that adopted these documents are noted in them. Although the fact that a substantial part of the human rights contained in international and legal documents is duplicated in them, their commitment to traditions and the values of their civilization allows them to give another interpretation of these or other human rights norms.

How can we ensure that these protection mechanisms work? Who or what compels states to carry out their obligations?

At a national level, this work is carried out by courts – when human rights instruments have been ratified or incorporated into national law – but also, depending on the country, by ombudsman offices, human rights committees, human rights councils, parliamentary committees, and so on.

**ТHEME 6. HUMAN RIGHTS IN UKRAINE**

Categories in focus:

A. The protection of human rights by the Constitution of Ukraine

B. Current situation in Ukraine

C. Human Rights Bodies of Ukraine

The Constitution of Ukraine is an important tool for the protection and promotion of human rights in the country. It broadly refers to human rights and commits Ukraine to guarantee a good standard of living to its citizens. Furthermore, it enables Ukraine to translate international agreed standards into domestic law, and obligates all branches of Government to respect and ensure the rights it enunciates (art. 3).

The second chapter of the Constitution of Ukraine – “Rights, freedoms and duties of man and citizen”

totals almost a third of the overall number of constitutional norms. It consists of 48 articles and contains a wide range of rights and freedoms of mankind which includes all the rights and freedoms that are recognized by the world democratic community as central humanistic standards.

Article 24. The Constitution of Ukraine states: Citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

Article 26. The Constitution of Ukraine states: Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine. Foreigners and stateless persons may be granted asylum by the procedure established by law.

The civil rights include:

the right to the free development of the personality (art. 23),

an inalienable right to life and respect of dignity (art. 27, 28),

a right to freedom and bodily security (art. 29),

a right to inviolability of habitation (art. 30),

a right to privacy of correspondence, telephone talks, telegraph and other correspondence (art.31).

The Constitution states that no one “shall be subject to interference on his or her personal and family life” (art. 32). Everyone is guaranteed the right to freedom of movement, freedom of speech and thoughts and right to freedom of religion (art. 33, 34, 35).

Among the political rights protected by the Constitution of Ukraine, the right to freely associate in political parties and public organizations (art. 36), the right to participate in the administration of state affairs in All-Ukrainian and local referendums, to freely elect and to be elected to bodies of state power and bodies of local self-government (art. 38). Article 39 recognizes the right to hold peaceful demonstrations and meetings, while art. 40 provides the right to appeal to bodies of state power, local self-government, and to the officials and officers of these bodies.

In the context of economic, social and cultural rights, the Constitution of Ukraine consecrates

the right of every human being to own, use and dispose of his or her property (art. 41),

the right to entrepreneurial activity (art. 42),

the right to work (art. 43),

the right for those who are employed to strike for the protection of their economic and social interests and the right to rest (art. 44, 45),

the right to social protection (art. 46),

the right to housing (art. 47),

the right to an adequate standard of living (art. 48),

the right to health (art. 49),

the right to a safe environment (art. 50),

the right to marry and also the state protection of the family, childhood, motherhood and fatherhood (art. 51, 52),

the right to education (art. 53),

the right to freedom of creativity and the right to protection for intellectual and creative activity (art. 54).

However, serious human rights concerns persist, including continuing impunity, torture and an absence of the rule of law in the east, as well as a difficult humanitarian situation for those living in the affected eastern areas and for those internally displaced. Throughout the previous year, international and domestic actors struggled to end the armed conflict in eastern Ukraine, but the situation has remained unstable. Parts of Donetsk and Luhansk regions remain under de facto control of Russia-backed fighters. Russia violated international humanitarian law.

In Crimea, Crimean Tatars face further persecution for their peaceful opposition to Russia’s occupation of the peninsula. According to the United Nations Human Rights Monitoring Mission in Ukraine (UNHRMMU), mortar, rocket, and artillery attacks between April 2014 and 2018 killed over 10,000 people and injured more than 24,000 — including civilians and combatants on all sides — in Donetsk and Luhansk regions. The UNHRMMU reported a 66 percent increase in civilian casualties from May to August compared to earlier in 2016, and documented 28 civilian deaths in the summer, many of which resulted from shelling and landmines. In the self-proclaimed Donetsk People’s Republic (DNR) and Luhansk People’s Republic (LNR), local security services operate in a total vacuum of rule of law, which deprives people in their custody of their rights and leaves them without recourse to any remedies. The human rights climate in Crimea under Russian occupation remains repressive. People who decline Russian citizenship and retain their Ukrainian citizenship experience serious difficulties in accessing education, employment opportunities, or social benefits.

Are there free and independent media in Ukraine?

The constitution guarantees freedoms of speech and expression, and libel is not a criminal offense. The media landscape features considerable pluralism and open criticism of the government. However, business leaders with varying political interests own and influence many outlets, using them as tools to advance their agendas.

Are individuals free to practice and express their religious faith or nonbelief in public and private?

The constitution and a 1991 law define religious rights in Ukraine, and these are generally respected. However, the conflict in the East of Ukraine has increased friction between rival branches of the Orthodox Church, and smaller religious groups continue to report some discrimination. In the occupied eastern regions, separatist forces have reportedly persecuted Protestant and other non-Russian Orthodox denominations, forcing them to flee or operate underground churches.

Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution?

Ukrainians generally enjoy open and free private discussion, although the polarizing effects of the conflict have weighed on political expression, and intimidation prevails in the separatist-held areas.

Is there freedom of assembly?

The constitution guarantees the right to peaceful assembly but requires organizers to give the authorities advance notice of any demonstrations. While officials generally foster an open environment for public gatherings in practice, Ukraine lacks a law governing the conduct of demonstrations and specifically providing for freedom of assembly. Moreover, threats and violence by nonstate actors sometimes prevent certain groups from holding events, particularly those advocating equal rights for LGBT (lesbian, gay, bisexual, and transgender) people.

Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights– and governance-related work?

Civil society has flourished since 2014, as civic groups with a variety of social, political, cultural, and economic agendas have emerged or become reinvigorated. Many groups are able to influence decision-making at various levels of government. However, in March 2017, Poroshenko signed a law that increased monitoring of NGOs focused on corruption by requiring their leaders, staff, and contractors to submit asset declarations.

Is there an independent judiciary?

Ukraine has long suffered from corrupt and politicized courts, and recent reform initiatives aimed at addressing the issue have stalled or fallen short of expectations. In 2016, a competitive selection process for new Supreme Court judges was initiated. However, in 2017 the process came under heavy criticism from civil society and other observers. In particular, NGOs accused the High Qualification Commission of Judges of having failed to select Supreme Court candidates fairly and through transparent processes, neglecting to consider the opinion of the Public Integrity Council during the selection process, and ultimately recommending a number of incumbent or retired judges who were considered to be flawed candidates. Poroshenko formally appointed the 113 new Supreme Court judges in November 2017.

Meanwhile, Poroshenko signed legislation in October 2017 to create a key anticorruption court. But at year’s end the body had yet to be established, and observers warned that its eventual operations could be hamstrung if legislation Poroshenko submitted in December were adopted. Contrary to the recommendations of the Council of Europe, Poroshenko’s bill would significantly reduce the role of Ukraine’s international donors in the judicial selection process for the new anticorruption court. The bill would also expand the court’s jurisdiction, creating the potential for backlogs.

Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance?

The government generally does not restrict social freedoms, though same-sex marriages are not recognized in Ukraine. Separately, about 1.85 million Ukrainian women suffer domestic violence annually, according to the UN Population Fund, and police responses to the few who report such abuse are inadequate.

Nowadays Ukraine faces the need for approval of the National Human Rights Strategy determined by systemic issues related to the ensuring and exercise of human rights and fundamental freedoms, as well as their effective protection. The National Human Rights Strategy aims at the implementation during 2015-2020 of strategic goals based on the principles of the Strategy in order to eliminate the root causes of human rights violations and implement effective mechanisms for exercise and protection of human rights and fundamental freedoms.

The Strategy spells out expected outcomes, mechanisms, principles and procedure of implementation, restoration and exercise of human rights in Ukraine, as well as observation, monitoring, and control of Strategy implementation. The Strategy does not cover an exhaustive list of human rights issues, but, rather, focuses on systemic challenges which impede sustainable development of the society.

By 2020, the Strategy will have achieved the following goals:

1) appropriate conditions for the exercise of human rights and fundamental freedoms and an effective system of their protection is established;

2) human rights and fundamental freedoms have become a driver of the state policy that guides government agencies and local governments in a decision-making process.

The Strategy is based on the following principles:

 openness and transparency of the development, implementation and monitoring of the Strategy with the aim to maximize the access to information about these processes;

 improving human rights for all with due attention to the needs of the most vulnerable groups;

 equality, including gender equality, which envisages equal opportunities, equal access to opportunities, equivalence of results;

 non-discrimination, which envisages equal for all rights and freedoms without limitation;

 commitments of the state to respect, protect and enforce the rights;

 specificity, providing for the understanding of the strategic goals by all parties engaged in the implementation and monitoring of the Strategy;

 feasibility and measurability of strategic objectives, providing for their realistic achievement based on defined resources and in a timeframe set; the availability of mechanisms for assessment of their achievement.

HUMAN RIGHTS BODIES OF UKRAINE

The Kharkiv Human Rights Protection Group (KhPG) is one of the oldest and most active Ukrainian human rights organizations whose experts specialize in promoting and strengthening fundamental human rights in the country and plead strategic cases at the European court of human rights. As a legal entity, it was established in 1992, but it has been working as a human rights protection group since 1988 under the Society "Memorial", an early official human rights organization in the former USSR. Many members of the organization took part in human rights movements during the 1960s – 1980s.

The Group is active in three main areas:

providing assistance to individuals whose rights have been infringed, and carrying out investigations into cases of human rights violation;

developing human rights education and promoting legal awareness through public actions and publications;

providing analysis of the human rights situation in Ukraine (particular with regard to political rights and civil liberties).

The Group has developed a human rights network which connects local human rights organizations throughout Ukraine. It fulfils a vital function as resource and information center. The Group weekly bulletin ‘Prava Ludyny’ [‘Human Rights’] provides reports and analyses related to the first area listed above. The monthly review ‘Civic Education’ and various special issues focus on the second and third areas of activity.

The Ukrainian Helsinki Human Rights Union (UHHRU) was established on April 1, 2004. It is the largest association of human rights organisations in Ukraine. The Union brings together 29 non-governmental human rights organisations. The Ukrainian Helsinki Human Rights Union promotes the development of human societies based on respect to human life, dignity and harmonious relations between people, the state and nature through the creation of a platform for cooperation between the members of the Union and other members of the human rights movement. The UHHRU constitutes itself as the part of the Helsinki movement and continuator of traditions and activities of the Ukrainian Public Group to Promote the Implementation of the Helsinki Accords on Human Rights – the UHG.

The Association of Ukrainian Human Rights Monitors on Law Enforcement was founded in 2010 by former employees of the Human Rights Monitoring Department of the Ministry of Interior. The organization oversees nationwide monitoring of Ukrainian law enforcement conduct, utilizing its resources to ensure the active preservation of human rights and fundamental freedoms in the Country. The Association works with NGOs, activists, civil society experts, victims of abuses, and Government employees. The main activities of the Association are:

Monitoring on the police’s compliance with human rights guidelines;

Analysis of Ukrainian legislation on human rights, documenting the assessments and information materials related to human rights violations;

Human rights promotion of awareness among public employees and Government officials, carrying out public opinion surveys aimed at evaluating the police effectiveness;

Development and implementation of public involvement in oversight of law-enforcement activities;

Preparation of periodic reports on the quality of human rights observance by the Ukrainian police;

Law enforcement reforms.

International Women’s Rights Center “La Strada Ukraine” is a non-governmental organization to work towards the prevention of trafficking in persons, in particular in women and children, elimination of all forms of discrimination and violence in the society, promotion and protection of human rights, gender equality and children's rights. The "La Strada" programme for the Prevention of Trafficking in Women in Central and Eastern Europe was initiated by three NGOs from the Netherlands, Poland and the Czech Republic in 1995. Shortly afterwards, in 1997, Ukrainian NGOs joined the program. The Center "La Strada-Ukraine" is a member of the Coordinating Council for the Prevention of Trafficking in Women initiated by the Parliament Commissioner for Human Rights since 1998. In 2004 "La Strada-Ukraine" Center became one of the founders and member of the International "La Strada" Association.

The No Borders project of the non-profit organization Social Action Center was established in 2006 as an informal initiative by grassroots activists in response to anunlawful extradition of 11 refugees from Ukraine to Uzbekistan. This initiative’s goal was to attract public attention to civic protests and problems of refugees in Ukraine. Among the sphere of interests of No Borders activists were freedom of movement, refugees’ rights in Ukraine, and counteraction to xenophobia and racism in Ukrainian society. Together with other human rights NGOs and international organizations, No Borders operates in the following areas:

 provide legal support to refugees and asylum seekers;

 monitor xenophobia and racism;

 provide legal support to victims of hate crimes and discrimination;

 trainings and education for various target groups on these topics.

The Institute of Mass Information (IMI) is a Kyiv-based non-governmental organization that researches mass information in modern society. It was established in 1995 by Ukrainian and foreign journalists. In September 2007, IMI became a member of the International Freedom of Expression Exchange (IFEX). The organization’s main objectives include defending freedom of speech, supporting Ukrainian mass media, facilitation of the development of high quality journalism, monitoring the rights of journalists and media and research carried out in the field of public opinion or other occurrences connected with the formation of the collective conscience. As far as the crisis of 2013-2014 is concerned, IMI is playing an active role protecting the journalists, in particular it takes the following actions:

 offers a free rent of bulletproof vests, helmets and ballistic eyewear for those journalists who are going to the hotspots in order to carry out their professional tasks and are not provided the proper protective equipment by the editorial office;

 assists in getting the financial support from the international media organizations for those journalists, who have been suffered due to their implementation of the professional duties, who have been forced to leave the place due to the pressure and intimidation, who have been in terrorists’ captivity or who need medical treatment;

 offers the consultation or treatment with the professional psychologist for those journalists, who have been mentally affected during stressful situations;

 provides juridical support and consultations with lawyers for journalists who have been underpressure of governmental or shadow authorities;

 the analytical service of IMI collects the facts of journalists’ rights abuses and forwards them to the leading international human rights organizations.

The Centre for Civil Liberties was established in 2007 to promote the values of human rights, democracy and solidarity in Ukraine and Eurasia and to reinforce the principle of human dignity. The NGO is located in Kyiv, Ukraine. Objectives of CCL are protection of fundamental rights and freedoms; representation of the public and public control over the observance of human rights in the activities of national and local governments; work with young people to create a new generation of human rights defenders and civil society activists; advocacy and education on human rights and democracy, implementation of programs of international solidarity.

**THEME 7. LEGAL STATUS OF FOREIGNERS IN UKRAINE**

The legal status of foreigners and stateless persons is determined by the Constitution of Ukraine, the law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”, other laws of Ukraine and the international treaties of Ukraine.

If an international treaty of Ukraine sets other rules than those stipulated in “The law of Ukraine on the Legal Status of Foreigners and Stateless Persons”, the rules provided in the international treaty of Ukraine shall apply.

On 16 April 2017, Resolution No. 118 of the Cabinet of Ministers of Ukraine "On Approval of the Rules for Issuing Visas to Enter into Ukraine and Transit Through Its Territory", dated 1 March, 2017 (the Resolution), was addopted. The Resolution, among other updates, provides for an option to submit a visa application online, regulates the term necessary to obtain a visa and reduces the visa consulate fee.

The Resolution has established the following periods for issue of visa:

 pursuant to the expedited procedure, a visa should be issued within five business days from the day of submission of the visa application documents to the consulate (previously, this term was not to exceed 15 calendar days);

 pursuant to the regular procedure, a visa should be issued within 10 business days from the day when the visa application documents were submitted to the consulate, unless additional verifications are required (previously, this term was up to 15 calendar days).

The fee charged by the consulate for a visa of any type (B, C or D) has been reduced to USD 65. Previously, the fee depended on the allowed number of entries into Ukraine and was equal to USD 85, USD 130 and USD 200 respectively.

Depending on the purpose of travel, visas can be of the following types, marked by alphabetical code (Latin letters – in the machine readable area): transit visa (marked by letter B, in the machine readable area – VB); short-term visa (marked by letter C, in the machine readable area – VC); long-term visa (marked by letter D, in the machine readable area – VD).

Transit visa (type B). Transit visas are issued to foreigners and stateless persons to allow transit passage through the territory of Ukraine to a third country and transit carriage of cargo and passengers by automobile transport. Transit visas can be issued as single-entry, two-entry and multi-entry visas for a period indicated in documents serving as a basis for visa issuance, but for no longer than one year, unless otherwise stipulated by Ukraine’s international treaties. The period of stay on the territory of Ukraine during each transit through Ukraine may not exceed five days.

Short-term visas (type C) are issued to foreigners and stateless persons for entry to Ukraine if their stay in Ukraine does not exceed 90 days in the period of 180 days.

Short-terms visas can be issued as single-entry, two-entry and multi-entry visas with the typical period of six months or a period indicated in documents serving as a basis for visa issuance, but for no longer than five years. Validity period of visa may not exceed validity period of passport.

New ground to obtain a short-term visa (type C): now, a short-term visa can be obtained by foreign nationals upon submission (as part of the application) of title documents to real estate located in Ukraine. Previously, such ground for obtaining a visa did not exist.

Simplification of the requirements for visa invitation letters: for the purpose of obtaining a short-term visa, the invitation can be

(i) on the letterhead of the host Ukrainian legal entity;

or

(ii) notarized, if the invitation is issued by a natural person.

Previously, all invitations had to be obtained from the relevant department of the State Migration Service of Ukraine.

Long-term visas are issued to foreigners and stateless persons for entry to Ukraine with the intention to obtain a document allowing stay or residency in Ukraine for a period exceeding 90 days.

Long-term visas are issued by a Ukrainian diplomatic mission abroad as multi-entry for 90 days, unless otherwise stipulated by legislation or international treaties of Ukraine.

Previously, such visa was issued only as a single entry visa allowing the holder to stay in Ukraine for up to 45 days.

A new ground has been established for obtaining a visa at the border for business or tourist purposes. Now, the nationals of certain states (e.g., Australia, India, China, the UAE, Singapore) will be able to obtain such visa at the border for a stay of up to 15 days. Previously, obtaining a visa at the border for business travel was not possible.

According to Article 9 the Law of Ukraine «On Legal Status of Foreigners and Stateless Persons», foreigners and stateless persons enter Ukraine with a passport as specified by this Law or the international treaty of Ukraine and a visa obtained in the prescribed manner. This rule does not apply to foreigners and stateless persons who cross the state border of Ukraine seeking recognition as refugees or persons requiring additional or temporary protection or asylum. Foreigners and stateless persons during the border control procedure performed at the border crossing points are required to present their biometric data for documentation. The term of stay of foreigners and stateless persons in Ukraine is established by the visa, the legislation of Ukraine or the international treaty of Ukraine.

The rules of issuing visas to foreigners and stateless persons and the list of required documents are established by the Cabinet of Ministers of Ukraine. The decision on visa issuance is made in due course by the diplomatic missions or consular posts of Ukraine, the Ministry of Foreign Affairs of Ukraine or the representative office of the Ministry of Foreign Affairs in Ukraine.

According to item 5 of Resolution No. 118 for all visa types, unless otherwise stipulated by legislation or international treaties of Ukraine, the following documents are to be submitted to the authorize body:

1) passport that should meet the following requirements:

be valid for at least three months after the stated date of departure from Ukraine; have at least two blank pages; have validity period of no longer than 10 years;

2) completed and signed visa application form. Visa application forms of minors shall be submitted with signature of a parent or legal guardian;

3) one coloured photo 35 mm x 45 mm;

4) valid health insurance with coverage of at least 30,000 EUR or equivalent in other currency, unless otherwise stipulated by legislation or international treaties of Ukraine.

5) proof of the applicant’s financial sufficiency for the intended period of stay and return to the country of origin, or transit to a third country, or the possibility to legally obtain sufficient financial means on the territory of Ukraine, as required by the Rules for proving financial sufficiency of foreigners and stateless persons for entry to Ukraine, stay on the territory of Ukraine, transit through the territory of Ukraine and departure from Ukrainе.

6) payment slip for consular fee, unless otherwise stipulated by legislation or international treaties of Ukraine.

For issuance of short-term visa, the notarized letter of invitation shall be submitted in addition to those listed in item 5 of these Rules: notarized letter of invitation from a physical person – Ukrainian citizen, foreigner or stateless person who legally reside, temporarily or permanently, in Ukraine. Invitation shall contain full name of a physical person, details of his/her passport and temporary or permanent residency permit (for a foreigner or stateless person), address, and full name of the invited person, information about his/her date and place of birth, nationality, passport details, place of residence, purpose of visit, duration of intended visit to Ukraine, number of entries and place of stay in Ukraine, physical person’s obligations towards possible costs related to the invited person’s stay or departure from Ukraine. The invitation shall be appended by copies of a hosting person’s passport and temporary or permanent residency permit in Ukraine (for a foreigner or stateless person).

Foreigners and stateless persons may be denied a visa in the cases of:

 threat to the national security or public order, public health, rights and lawful interests of the citizens of Ukraine and other persons residing in the territory of Ukraine;

 registration in the database of persons who under the laws of Ukraine are not allowed to enter Ukraine or have a temporarily restricted right to enter Ukraine;

 presentation of an invalid passport or a passport belonging to another person; submission of false information or falsified other documents;

 absence of a valid medical insurance provided the possibility of its issuance in the territory of the country in which the relevant visa application is submitted;

 lack of adequate financial support for the period of intended stay and to return to the country of origin or transit to a third country or an opportunity to secure sufficient financial support in a lawful manner in the territory of Ukraine;

 absence of evidence regarding the purpose of the intended stay;

 absence of the documents that allow to establish the applicant’s intentions to leave the territory of Ukraine prior to the expiration of the visa;

 applicant's request to terminate consideration his/her visa application.

The decision to refuse the visa is taken by the authorities who decided to process and issue it. A visa may be canceled during passing of the border control on grounds and in accordance with the Law of Ukraine "On Border Control." A visa is canceled during the stay of foreigners and stateless persons in the territory of Ukraine in case of: a) establishing that during applying for a visa, the applicant used an invalid passport or passport issued to another person, or other false documents or presented false information; b) decision on forced return or forced deportation of a foreigner or a stateless person outside Ukraine. The decision to cancel a visa can be appealed in the manner prescribed by the law of Ukraine.

Entry/exit of Ukraine is organized in the following manner: a) foreigners and stateless persons need a passport document featuring an appropriate visa, unless another entry/exit procedure is set by the law or the international treaty of Ukraine; b) foreigners residing in Ukraine must have a passport document and a permit for permanent residence; c) stateless persons permanently residing in Ukraine need a stateless person’s ID for travel abroad; d) foreigners and stateless persons who are recognized in Ukraine as refugees or persons who need additional protection must have a travel document for travel abroad.

Foreigners and stateless persons who stay in Ukraine in connection with participation in the international technical assistance projects need a passport document and a residence permit. Foreigners and stateless persons who stay in Ukraine in connection with participation in the activities of religious organizations must have a passport document and a residence permit.

Foreigners and stateless persons who stay in Ukraine in connection with participation in the activities of branches, representative offices and other structural units of public (non-government) organizations of foreign countries need a passport document and a residence permit. Foreigners and stateless persons who work in the offices of foreign businesses in Ukraine must have a passport document and a temporary residence permit.

Foreigners and stateless persons who work as journalists or representatives of foreign mass media in Ukraine must have a passport document and a temporary residence permit; foreigners and stateless persons who have been enrolled in the educational institutions of Ukraine for at least one year - a passport document and a residence permit.

Foreigners – the citizens of countries who can enter Ukraine without a visa under the legislation of Ukraine or the international treaty of Ukraine need a passport document or another document if it is provided by international agreements of Ukraine. Foreigners who are the nationals of the states which have concluded agreements with Ukraine on local border traffic need the documents that give the right to cross the state border within the local border traffic, which are issued by diplomatic missions and consular offices in Ukraine as established by the Ministry of Foreign Affairs of Ukraine.

Employees of diplomatic missions, consular offices, representative offices of international organizations, representatives of the international organizations accredited by the Ministry of Foreign Affairs of Ukraine and having headquarters in Ukraine and in accordance with the statutory documents of such organizations or relevant international treaties of Ukraine enjoy diplomatic privileges and immunities, as well as their family members may enter Ukraine under a passport document and an accreditation card.

Registration of foreigners and stateless persons who enter Ukraine is carried out at the crossing points at the state border of Ukraine by the state border protection agencies. A registration stamp made in the passport and/or immigration card or another document of a foreigner or a stateless person established by the laws of Ukraine is valid throughout the territory of Ukraine, regardless of location or residence of a foreigner or a stateless person in Ukraine.

Rules for the registration of foreigners and stateless persons shall not apply to persons who illegally crossed the state border of Ukraine with the intention of recognizing them refugees or the persons requiring additional protection, asylum or temporary protection in Ukraine. The central executive body implementing the government policy on migration registers foreigners and stateless persons covered by the law on refugees and persons requiring additional or temporary protection in Ukraine, having only one of the documents issued to such persons under the above law.

The following foreigners and stateless persons are exempt from registration: heads of states and governments of foreign countries, the members of parliament and government delegations, technical personnel supporting such delegations (officials) and their families who came to Ukraine at the invitation of the President of Ukraine, the Verkhovna Rada of Ukraine or the Cabinet of Ministers of Ukraine, the ministries, other central executive bodies of Ukraine; the persons and family members of such persons who enter Ukraine using the United Nations ID or ID of UN organizations.

The same rule concerns: foreigners and stateless persons under eighteen years of age; foreign tourists during a cruise; crew members of foreign vessels (aircrafts) which in due course arrived to Ukraine; individuals who make up the crews of foreign non-military vessels; individuals who make up the crews of commercial aircrafts of international airlines, international train crews in the event of their stay at the airports or train stations specified in the transportation schedule.

Foreigners and stateless persons lawfully residing in the territory of Ukraine may receive extension for the period of their stay (under legitimate reasons). The extension of stay of foreigners and stateless persons may be refused in the absence of appropriate grounds and sufficient financial support to cover the costs associated with the stay of the foreigners and stateless persons in Ukraine or the appropriate guarantees from the host.

Transit of foreigners and stateless persons through the territory of Ukraine is carried out under available Ukrainian transit visa, unless otherwise is provided by the law or the international treaties of Ukraine. The rules of transit through the territory of Ukraine by the foreigners and stateless persons are approved by the Cabinet of Ministers of Ukraine. In cases of forced stop, the foreigners and stateless persons may receive extension of temporary stay in the territory of Ukraine before elimination of the circumstances that caused it in the manner prescribed by the Cabinet of Ministers of Ukraine. Transit by foreigners and stateless persons through the temporarily occupied territory is prohibited.

Entry, stay and transit through the territory of Ukraine for foreigners and stateless persons is made in the presence of adequate financial support or opportunities to obtain such support legally in Ukraine. The procedure for confirmation of adequate financial support and its volume is determined by the Cabinet of Ministers of Ukraine. Foreigners and stateless persons are obliged to submit proof of financial support at the request of the authorized officers.

Availability of financial support or guarantees of its availability may be confirmed by presenting the following: cash in the national currency of Ukraine or in convertible foreign currency; document indicating the amount of money, in exchange of which cash may be obtained from the banking institutions of Ukraine; payment cards of international payment systems supported by the statement from the applicant's bank account, confirming the available amount of cash; document confirming the reservation or payment for food and lodging while in Ukraine; contract for travel services (voucher); a guarantee letter of the host who invited a foreigner or a stateless person with the commitment to pay all expenses associated with the stay of the above persons in Ukraine and leaving Ukraine; a travel ticket to return to the country of nationality or the country of residence or to a third country.

According to the Law of Ukraine “On Legal Status of Foreigners and Stateless Persons”, the right to temporary residence permit have foreigners, who arrived in Ukraine for the purpose of:

 employment in Ukraine;

 family reunification, if one spouse is a citizen of Ukraine;

 family reunification, if one of its members (spouse, children) has a temporary residence permit in Ukraine;

 performance of the project of the international technical help;

 work in a religious organization ;

 work in representative offices and branches of foreign organizations, companies or banks;

 for cultural, educational, scientific work and volunteering;

 work as a correspondent or representative of a foreign mass media;

 education;

 military service in Ukraine on the contract base

Procedural formalities of temporary residence permit processing are approved by the Order of the Cabinet of Ministers of Ukraine №251, dated 28.03.2012. According to this Order, duration of temporary residence permit could be up to 1 year, with a possibility to extent it if there is proper basis. A stamp is filled in the passport of foreigner, where specified, that he is in Ukraine on the basis of temporal residence permit given to him.

Extension of stay of foreigners and stateless persons in Ukraine

1. Foreigners and stateless persons lawfully residing in the territory of Ukraine may receive extension for the period of their stay (under legitimate reasons).

2. The documents on the extension of stay in Ukraine are issued on the basis of written applications by the foreigners or stateless persons and the host to be submitted no later than three working days prior to the expiration of the term of their stay in Ukraine.

3. The extension of stay of foreigners and stateless persons may be refused in the absence of appropriate grounds and sufficient financial support to cover the costs associated with the stay of the foreigners and stateless persons in Ukraine or the appropriate guarantees from the host.

4. Extension of stay in Ukraine is made by the territorial bodies of the central executive body implementing the state policy on migration in the manner prescribed by the Cabinet of Ministers of Ukraine.

Procedure and conditions for immigration to Ukraine for foreigners and stateless persons are set by the Law of Ukraine “On immigration”.

Permit for immigration to Ukraine can be granted to the foreigners and stateless persons, who according to the Ukrainian legislation have the grounds to immigrate to Ukraine. The mentioned grounds are listed in the Article 4 of the law of Ukraine “On immigration”.

Immigration permit is granted within an immigration quote determined by the Cabinet of Ministers of Ukraine according to the prescribed procedure to the following categories of immigrants:

1) scientists and cultural workers whose immigration corresponds to the interests of Ukraine;

2) highly qualified specialists and workers who are needed for the Ukrainian economy;

3) persons who made an investment into the Ukrainian economy by foreign currency on the amount not less than 100 000 USD. Such an investment should be duly registered in accordance with the prescribed procedure;

4) persons who are either brother or sister, grandfather or grandmother, or grandchild of the Ukrainian national;

5) persons who previously possessed the Ukrainian citizenship;

6) parents / spouse of the immigrant and his/her minor children;

7) persons who continuously resided in Ukraine during three years from the day when the status of refugee or asylum were granted to them, as well as their parents, spouse, minor children residing with such persons.

Immigration permit beyond the quote is granted to the following persons:

1) one of the spouses if another spouse is the Ukrainian national and marriage between them was registered more than two years ago, children and parents of the Ukrainian nationals;

2) persons who are guardians or trustees of the Ukrainian nationals or are under the guardianship of the Ukrainian nationals;

3) persons who have the right to become a citizen of Ukraine on the basis of territorial origin;

4) persons whose immigration is a state interest for Ukraine;

5) foreign Ukrainians, the spouse of such foreign Ukrainians, their children if they stay jointly in Ukraine.

The processing time for application shall not exceed 1 year from the date when such application was submitted.

Diplomatic or consular mission of Ukraine in respect of the person, who permanently resides abroad and obtained immigration permit, issues immigration visa which is valid within 1 year from the date of issuance. Such person entries the Ukrainian territory according to the rules determined by the Ukrainian legislation.

After arriving to Ukraine the immigrant should submit an application for obtaining Permanent Residence Certificate (PRC) is the document which confirms the right of the foreigner or stateless person to permanently reside in Ukraine) to the concerned regional migration authorities at the place of immigrant’s residence. A copy of applicant’s passport containing immigration visa and a copy of immigration permit should be attached.

Permanent Residence Certificate shall be issued within 1 week from the date of receiving the application by concerned immigration authorities.

Permanent Residence Certificate for the person who legally stays in Ukraine and obtained immigration permit shall be issued by concerned immigration authorities at the place of his/her residence within 1 week after receiving an application.

According to the Constitution of Ukraine, foreigners and stateless persons residing in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same responsibilities as citizens of Ukraine. This guarantee also applies to the right to employment of foreigners and stateless persons.

Obtaining an identification code for most citizens of Ukraine is the required procedure. However, under the law of Ukraine citizen of Ukraine may reject of receiving the identification code through the religious beliefs. But for foreigners not receiving an identification code can be a serious obstacle to business activity in Ukraine. According to the current legislation of Ukraine the information about foreign citizens (stateless persons) who permanently reside in Ukraine, foreign citizens (stateless persons) who do not have permanent residence in Ukraine but who in accordance with the legislation required to pay taxes in Ukraine or who are the founders of legal persons established at the territory of Ukraine is included into the State Register of natural persons-taxpayers.

Identification code is needed for foreigners in the following cases:

- Contracting of material nature, provided that they shall be notarized;

- Joining the founders of legal persons established at the territory of Ukraine;

- Employment at the company;

- Enrolled at a college or university. ;

- Obtaining a permit for temporary residence in Ukraine;

- Formalization of the nationality of Ukraine;

- Opening a bank account and so on.

Foreigners can not reject having codes as mark their passport with a note "shall be entitled to any payments without identification code" that indicates their rejection from having code as tax payer, is not stipulated by the law. Therefore, if the foreigners seeking income in Ukraine or engage in business activities, they should obtain an identification code. In other words, a citizen of another country actually loses the right to do business in Ukraine while refuses of having the identification code because of religious convictions.

The entry of foreigners in the temporarily occupied territory of Crimea are considered as the violation of the Ukrainian legislation, in particular the Law of Ukraine "On ensuring the rights and freedoms of citizens and legal regime of the temporarily occupied territory of Ukraine", as well as contrary to international law, in particular the provisions of the UN General Assembly resolution A / RES / 68 / 262 "The territorial integrity of Ukraine" dated 27.03.2014.

On June 4, 2015 Cabinet of Ministers of Ukraine adopted by its Decree №367 the Order of entering the temporarily occupied territory of Ukraine and exiting it, which establishes, among other things, the rules and procedure for entering and exiting temporarily occupied territory by foreigners, basing on the requirements of the Law of Ukraine «On ensuring rights and freedoms of citizens and legal regime on the temporarily occupied territory of Ukraine».

LAW OF UKRAINE “On the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine”(Verkhovna Rada (VVR), 2014, № 26, st.892)

Legal regime of temporarily occupied territory

1. On the temporarily occupied territory on the validity of the Act applies special legal regime of crossing borders temporarily occupied territory, committing transactions, conducting elections and referendums, the realization of other rights and freedoms of man and citizen.

2. The legal regime of temporarily occupied territory provides for a special procedure for the rights and freedoms of citizens of Ukraine residing in the temporarily occupied territory.

3. Legal regime of temporarily occupied territory may be prescribed, modified or revoked by the laws of Ukraine.

The order for temporary entry of persons occupied territory and exit from it

1. Citizens of Ukraine have the right to free and unimpeded access to the territory temporarily occupied and out of it through the control points of entry and exit upon presentation of a document of identity and proof of citizenship of Ukraine.

2. The entry of foreigners and stateless persons in the temporarily occupied territory and exit from it are allowed only by special permission through the control points of entry and exit.

The entry procedure is established by the Decision of the Cabinet of Ministers of Ukraine №367 from June 4, 2015 “On the order of entering the temporarily occupied territory of Ukraine and departure from it”.

Citizens of Ukraine may enter the occupied Crimea and leave it with any documents referred to in Article 5 of the Law "On Citizenship of Ukraine" or Article 2 of the Law "On procedure of exit from Ukraine and entry to Ukraine for the citizens of Ukraine".

Citizens of Ukraine under 16 years old enter Crimea with travel documents or in the presence of their parents, to whose passports their data are inserted.

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Data on foreign minors or stateless persons under 18 years entered into special permits issued to their parents or representatives.

A special permit is issued in cases of:

1) residing in the temporarily occupied territory of relatives and family members of a foreigner or stateless person, as evidenced by documents issued by authorized state bodies of Ukraine;

2) the gravesites of relatives or family members are located on the occupied territory, as evidenced by relevant documents;

3) the death of close relatives or family members living in the occupied territory of Ukraine, which is confirmed by relevant documents;

4) the availability of property rights to real estate located in the occupied territory;

5) the need to participate in the defense of national interests of Ukraine to the peaceful settlement of the conflict, liberation of Ukraine from occupation or for humanitarian policy (the request or consent of the Ministry of Foreign Affairs);

6) the necessity of diplomatic and consular functions, in particular within the framework of international organizations of which Ukraine is a party (the request or consent of the Ministry of Foreign Affairs);

7) making regular trips to the temporarily occupied territory of Ukraine related to the employment of employees of railways.

Special permissions are issued by territorial bodies of the State Migration Service at the place of stay of a foreigner or a stateless person, as well as in Novotroitsk and Henichesk districts of Kherson Region within 5 working days.

It can be single or multiple, its duration may not exceed the permitted period of stay of a foreigner in Ukraine.

Special permissions for multiple entries are issued for one year to those who regularly travels to the Crimea in public affairs, railroad, as well as foreigners or stateless persons who have a permanent residence permit in Ukraine and whose residence is registered in the Autonomous Republic of Crimea.

Persons guilty in breaking the mentioned order are subjected to criminal and administrative liability according to Ukrainian legislation in force.

**THEME 8. ON OBTAINING UKRAINIAN CITIZENSHIP BY CITIZENS OF OTHER COUNTRIES**

Citizenship in Ukraine is regulated by such acts as the Constitution of Ukraine, Law «On citizenship of Ukraine» dated 18 January 2001, as amended by the Law of 16 June 2005, and «implementation Order for applications concerning the citizenship of Ukraine and implementation of decisions, approved by the decree of President of Ukraine from March 27, 2001, in the edition of the Decree of 27 June 2006. In article 4 of the Law «On citizenship of Ukraine» stipulates that the issue of citizenship are regulated by international treaties, and if these treaties establishes other rules than those contained in the Law «On citizenship of Ukraine», the rules of the international Treaty.

Papers confirming the citizenship of Ukraine are as follows:

• passport of citizen of Ukraine;

• certificate of citizenship of Ukraine;

• passport of citizen of Ukraine for travel abroad;

• temporary certificate of citizen of Ukraine;

• travel document of the child;

• diplomatic passport;

• the seafarers' identity document;

• crew member certificate;

• the ID for the return to Ukraine.

Grounds for acquisition of citizenship of Ukraine is regulated by Art.6 of the Law «On citizenship of Ukraine». You have the right to receive the citizenship of Ukraine in case:

1. Acquiring the citizenship of Ukraine by birth:

If You or Your parents live or lawfully resided in the territory of Ukraine, or were nationals of Ukraine at the time of birth, or were refugees and were granted refugee status, or any person found on the territory of Ukraine and whose parents are unknown.

2. Acquiring the citizenship of Ukraine by territorial origin:

If You or Your close relatives in the ascending or descending line who were born or permanently resided until 24 August 1991 on the territory, which became the territory of modern Ukraine have the right to the citizenship of Ukraine. The person born on the territory of Ukraine after August 24, 1991, which is a foreign citizen or a stateless person, and which undertakes to renounce other citizenship.

To adopt the citizenship of Ukraine a foreign citizen or the person without citizenship should previously renounce citizenship of other States.

Ukrainian law states that (after gaining Ukrainian citizenship) the new Ukrainian citizen must renounce its non-Ukrainian citizenship(s) within two years. “If a foreigner acquires the citizenship of Ukraine, then in legal relations with Ukraine, the person is recognized as a citizen of Ukraine only...” — Article 2. Law on citizenship of Ukraine.

The Constitution of Ukraine provides for a single form of citizenship in Ukraine (Art. 4), but it foresees no punishment for the violation of the norm.

President Petro Poroshenko has submitted to parliament an urgent bill amending the law on citizenship of Ukraine with regard to the right to change citizenship. "The bill deals with dual citizenship and provides that a person who voluntarily received the citizenship of a foreign country will be required to terminate Ukrainian citizenship."

The novelty will clarify the grounds for losing Ukrainian citizenship, including the voluntary acceptance of a foreign citizenship by a citizen of Ukraine, or not renouncing foreign citizenship after receiving the Ukrainian one.

Acquisition of citizenship of Ukraine

1. By birth;

2. By territorial origin;

3. Due to granting the citizenship of Ukraine;

4. Due to renewal of the citizenship of Ukraine;

5. Due to adoption;

6. Due to establishment of tutelage or guardianship over a child;

7. Due to establishment of guardianship over an incapable person recognized in that capacity by a court;

8. Due to citizenship of Ukraine of one or both parents of a child;

9. Due to recognition of parenthood or affiliation;

10. Due to other grounds foreseen by the international treaties of Ukraine.

The conditions for granting the citizenship of Ukraine are as follows:

• A foreign citizen or a stateless person, taking the citizenship of Ukraine is obliged to recognize and respect the Constitution of Ukraine and laws of Ukraine.

• A foreign citizen or a stateless person, taking citizenship of Ukraine is obliged to provide a Declaration about the lack of citizenship or the commitment termination of the citizenship of another state.

• If the person resides in the territory of Ukraine on legal grounds in the last five years.

• If the person is legally married to a citizen of Ukraine for more than two years.

In the absence of grounds for denial of permit to immigration.

• The person applying for the citizenship of Ukraine should speak the state language or to understand sufficient for communication.

• Citizenship may be granted to refugees who have lived legally in Ukraine over 3 years.

Refugee means person who is not a citizen of Ukraine and who, on account of a well-founded fear of becoming a victim of persecution for reason of race, religion, ethnicity, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or is unwilling to avail himself of the protection of this country owing to the said fear; or, having no nationality and being outside the country of his previous habitual residence, is unable or is unwilling to return to such country on account of the said fear.

Issues related to refugees and persons in need of complementary of temporary protection, are regulated by the Law of Ukraine "On Refugees“, other regulatory-legal acts, as well as international treaties, approved as binding by the Verkhovna Rada of Ukraine.

1. A person who, intending to be recognized as a refugee in Ukraine or a person in need of complementary protection, crossed the Ukrainian state border in compliance with procedures set by the legislation of Ukraine, must apply to the respective migration service authority for recognition as a refugee or a person in need of complementary protection, within five working days.

2. A person who, intending to be recognized as a refugee in Ukraine or a person in need of complementary protection, illegally crossed the state border when entering Ukraine, must immediately apply to the respective migration service authority for recognition as a refugee or a person in need of complementary protection.

If a person, stays legally in Ukraine on a temporary basis, and during such stay conditions indicated in Article 1.1.1 or 1.1.13 hereof have arisen in the country of his/her citizenship or former habitual residence, owing to which he/she cannot return to the country of his/her origin; and if such person has intention to be recognized as a refugee in Ukraine or a person in need of complementary protection, he/she must apply to the appropriate migration service authority for recognition as a refugee or a person in need of complementary protection before expiration of the period of his/her stay in the territory of Ukraine. The application for recognition as a refugee or a person in need of complementary protection shall be considered by the migration service authorities in oblasts, and cities of Kyiv and Sevastopol within two months following the day of decision on processing the documents solving the issue of recognition as a refugee or a person in need of complementary protection. The Head of the migration service authority may extend the consideration period based on substantiated request of the officer, who consider the application, but for the period not exceeding three months.

The refugee certificate or certificate of a person in need of complementary protection shall be issued for a five-year period.

At the time of re-registration of a refugee or a person in need of complementary protection, the migration service authority shall renew the refugee certificate or certificate of a person in need of complementary protection at his/her place of residence.

The person, concerning whom a decision on processing documents for solving the issue of recognition as a refugee or as a person in need of complementary protection, shall have the right to: temporary employment, education and medical care pursuant to the procedure determined by the Ukrainian legislation; stay with relatives, in a hotel, rented premises or temporary accommodation centers for refugees; free legal assistance in the established order ; other rights provided by the Constitution and laws of Ukraine for foreigners and stateless persons who stay legally in the territory of Ukraine.

January 28, 2016 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to Article 9 of the Law of Ukraine" On Citizenship of Ukraine "to establish a simplified procedure for granting the citizenship of Ukraine of foreigners and stateless persons performing military service in the Armed Forces of Ukraine", in therefore the implementation of this law on changes required in the Decree of the President of Ukraine of March 27, 2001 № 215 (Decree of the President of Ukraine № 120/2016).

This law, amended Article 9 of the Law of Ukraine "On Citizenship of Ukraine" in the part concerning simplification of the procedure for granting the citizenship Ukraine persons performing military service in the Armed Forces of Ukraine.

Foreigners and persons without citizenship who established legislation of Ukraine military service under contract in the Armed Forces of Ukraine, the prescribed period of continuous legal residence in Ukraine for three years from the entry into force of the contract on military service in the Armed Forces Ukraine. However, Presidential Decree number 120/2016 Ukraine a list of documents that will serve as documentary proof of said fact: a copy of military card, copy of passport or travel document stateless persons without citizenship ID card to travel abroad.

The main documents for the citizenship of Ukraine this category of persons other than relevant statements, photographs, the obligation to terminate foreign citizenship or a declaration of absence of citizenship, certificate of knowledge of the Ukrainian language and the income statement, serve a copy of the contract for military service in the Armed forces of Ukraine and certificate of service, valid at the time of submission of documents to obtain immigration permits such persons is required.

In addition, the law provides for a simplified procedure for granting the citizenship of Ukraine the person who established legislation of Ukraine military service in the Armed Forces of Ukraine and awarded the state award of Ukraine.

For this category of persons other than the above-mentioned document is a copy of the document confirming the awarding of the State award Ukraine.

Considering the above, in the event of an appeal to the local authorities and departments Migration Service foreigners or stateless persons, which are covered by the abovementioned Law should provide them within the competence full assistance and clarification.

A citizenship of Ukraine may be denied if:

• Persons have committed crimes against humanity, or genocide.

• Persons are convicted in Ukraine for committing serious and especially grave crimes-to-maturity or expunging the criminal record.

• Persons committed on the territory of another state grave or particularly serious crime under the laws of this state.

• Persons lost citizenship of Ukraine due to fraud, providing false information about yourself, forged documents, etc.

The time for obtaining the citizenship of Ukraine

You can use a simplified scheme for obtaining the citizenship of Ukraine, which is applicable to certain categories of citizens who have a close relative permanently residing in the state in 1992 or born on the territory of Ukraine, or citizens restoring the citizenship of Ukraine. Under the simplified procedure, the term citizenship is about 1 month. The solution according to the simplified procedure is adopted by the regional management division of the State migration service of Ukraine.

If You do not come under the above conditions, You have to get the citizenship of Ukraine according to the General scheme, which lasts about 1-1.5 years. The decision in this case rests solely with the President of Ukraine. In the process of obtaining Ukrainian citizenship or residency permit you should know that documents preparation, their consideration by governmental authorities and communication with migration services can take a long time.

Due to procedures’ complexity and specificity, different swindlers make use of the foreigners’ desire to issue citizenship or residence permit as soon as possible and their unpreparedness to communicate with Ukrainian migration services.

So, we will make a review about different swindlers’ schemes in citizenship or residence fields. Usually swindlers don’t work alone, they form the organization. If you have surf the Web for information about Ukrainian citizenship, you could meet different ads, which offer you a citizenship or residency permit in Ukraine in shortest terms and with minimal amount of documents needed, or even without them. If you go by this ad, the risk of being cheated by swindlers’ organization is very high. In these ads swindlers promise their personal presence in migration services and help in documents’ preparation. In practice you pay only for escort to migration services, not having any guarantees but verbal ones. Of course, these organizations will help you to prepare necessary documents but with a price of thousands euro. Since swindlers aren’t going to make any pacts with client, after receiving an advance they just disappear. As the result, foreigner doesn’t receive any help, otherwise real price of this help is much lesser than the swindler’s one.

Also, pay the attention to fictive marriage, as it is a faster way to obtain Ukrainian citizenship. According to Ukrainian legislation, a foreigner must continually live on the territory of Ukraine at least for five years to claim for a citizenship. But if you are married with a Ukrainian and live with him/her in Ukraine you can obtain a citizenship only after two years of living together. As a result, some foreigners contract a fictive marriage – a marriage contracted for reasons other than the reasons of relationship, family, or love with Ukrainian citizens.

There are a few semi-legal organizations in Ukraine now which can find you a partner for fictive marriage. Of course this service is very expensive – prices start at five thousand euro. But you have to be ready that your “sweetheart” can turn out to be a simple girl from lowest social groups or even a criminal, so she would screw your money out for this marriage continually. If you refuse to pay again, she will just make a petition for divorce.

Different fraudulent organizations can also provide foreigner with falsified documents, even fake passport, because foreigner can’t check if it is a fake. According to Ukrainian legislation document forgery is punishable by law and if a foreigner is found with a fake passport or other document (which approves his birthplace or education) he/she will bear a criminal responsibility for it. Even if he/she didn’t know the passport was forged, foreigner will have to spend much time and effort to prove your innocence to court and law enforcement bodies.

Of course he/she will have almost no chances to obtain Ukrainian citizenship or residence permit after this incident even in legal way.

It’s not uncommon when swindlers can propose a foreigner to provide him/her with documents which prove his/her Ukrainian origins because it will simplify the procedure of obtaining a citizenship. Quality of these documents is usually low in comparison with the original ones. To prevent yourself from being cheated or if you just plan to obtain a citizenship it will be a good solution to ask Ukrainian lawyer organizations, which provide consultations in migration sphere. With a help of Ukrainian lawyers you would be able to prepare necessary documents and receive some advices to maximize your chances of successful obtaining a Ukrainian citizenship. Also you can translate and notarize all needed documents in lawyer’s office, while different fraudulent organizations usually don’t provide such services at all. Another advantage of lawyer organizations is a price which is much lower than in fraudulent organizations. Don’t forget about quality – asking a lawyer you will be sure that you work with professionals. And if you already lose your money due to swindle, you will receive help with production in court in lawyer organization.

**THEME 9: CIVIL LAW BASICS**

Part 1. Civil Law as a Branch of Law

Categories in focus:

A) Public and Private law

B) Roman law

Starting to study civil law, first of all, we need to determine correlation of this branch with such categories as “private law” and “public law”, since it affects choice of models, according to which the fields of national legislation are formed, codes are created, their content, character of relationships is determined, etc.

Scientiests conclude that the characteristic features of private law are:

1) recognition of priority of interests of a private individual as to interests of the state and other social and public formations;

2) recognition of “sovereignty of a private individual”, i.e. non-subordination to other persons in private relations;

3) lack of power relations between subjects of private law: they are private individuals, none of which acts on behalf of the state or its bodies (not a figurant of the state);

4) legal equality of participants of private relations before the law (but not necessarily before each other);

5) initiative of the parties in establishing relationships;

6) free choice of subjects of civil law in choosing rules of conduct, not expressly prohibited by law;

7) providing of benefits to ordinary proceeding of protecting the interests of private individuals in court;

8) implementation of "rights, freedoms” of personality based on the norms of natural law through appropriate legal institutions.

Therefore, private law can be defined as a set of ideas, principles, rules and regulations that determine the status and protect the interests of private individuals who are not figurants of the state and not in relations of power – subordination to each other.

Recently, lawyers (in particular, specialists in the field of administrative law) emphasize that when characterizing public law, it is not enough to specify only what concerns interests of the state in general, but one should also note that the following is inherent to public law:

1) official recognition of predominance of public (social) interests over interests of certain individuals;

2) presence of relations of power between its subjects - subordination;

3) clear definition of boundaries of possible behavior of subjects of public law by legislation acts adopted by relevant government authorities;

4) use of such method of legal influence as a direct "commitment”, when participants of specific legal relations are suggested to act in a certain way;

5) use of prohibitions on certain actions as a means of formation of behavior of subjects of public law;

6) use of such incentive, first of all, as state coercion to ensure proper conduct by a subject of public legal relations;

7) acting of public law as prerequisites for public order and results of its implementation;

8) one of participants of public relations is necessarily the state or the person which represents it (figurant of the state).

Therefore, public law is a set of legal rules and institutions that make up the functional-structural system, which regulates relations with the state (its figurants) and between subjects that are in relations of power and subordination to each other to ensure public order and protecting of interests of citizens.

Public law together with private law creates a general system of law that is a part of civilization (culture). The basis of private law is civil law that most fully absorbed all its features and is the foundation of all private law of Ukraine.

But despite importance of civil law, we should recognize that in one way or another, signs of private law regulation are characteristic also to other branches of law, which in their totality form Ukrainian private law. Family law, international private law and partly land law, environmental law and labor law must be referred to these areas of law. Today significant discussions arise regarding the place and role of economic law in the system of private law of Ukraine. However, economic law is not only a remnant of the legal system of Ukraine, which tried to synthetically combine organically inconsistent and contradictory private law and public-legal principles, but also a significant obstacle towards development of civil society and market economy.

Modern jurisprudence has its line age back to ancient Rome, since the Roman law was formed and became an important factor for the development of ancient culture, while being its essential part. Although legal norms governing civil relationships existed in more ancient civilizations and development of the Roman law was influenced by ancient Greek, ancient Egyptian, Jewish law, from which significant number of ideas, principles, specific legal rules were taken, but only in the Rome ancient civilization, law become a relatively independent phenomenon. It has gained importance of phenomenon that can be studied now, abstracting from the concrete historical conditions, culture, state in which it was formed.

Roman lawyers were first to create a special clear terminology, the same that is used almost by the entire world now, developed legal categories and notions, founded and developed a methodology of legal thinking. Finally, Roman lawyers were inspired in their search for those ancient ideals of justice, which are the same, as they meet eternal expectations of the human spirit and are now coming back into legal circulation as determinative frameworks of the modern legal system of Ukraine.

Legal significance of the Roman law is that the conceptual and categorical apparatus, terminology of modern law are based on the ideas, principles and definitions developed by the classical Roman jurisprudence.

The Roman private law was received most widely. Such legal categories as "agreement”, "commitment”, "delict”, "contract”, "mortgage” and others are initiated by the Roman private law and treated (with relatively minor modifications) in almost all countries unambiguously. It should be mentioned that their essence (as of many other traditional institutions of modern law) can be easier considered and understood, when we trace development of these concepts from their origins.

The social importance of the Roman law is that being an important part of the European civilization, it became in fact as vividly described by some culture experts (V. Skurativsky), one of cornerstones of the so-called "European house”. Civil law systems, also called continental or Romano-Germanic legal systems, are found on all continents and cover about 60%% of the world. In particular, it also influenced the development of Ukrainian law and continues influencing the concept of law in Ukraine today.

Part 2. Characteristic Features of Civil Law in Ukraine

Categories in focus:

A) Civil law as a scientific category

B) Subject of Civil law

C) Methods of civil regulation

D) Principles of civil law

Civil law is a manifestation of private law at the level of national legal systems, acting here as a branch of national law.

The term "civil law” is used in scientific and academic literature and in legal practice in several senses:

1) a special kind of subjective right;

2) a branch of national law;

3) a system of legislation;

4) a part of science of law;

5) a subject.

Civil law as the law that belongs to the subject of civil relations is a possibility of its determined behavior based on the norms of natural and positive law, protection of which is guaranteed by the state.

The characteristic features of civil law in this interpretation are that it:

1) belongs to the person who is a member of civil relations;

2) can be based both on legislative provisions and on the agreement of the parties, on customs, standards of morality, etc.;

3) is ensured by legal protection through public legal means (court, notary public, government agencies, etc.) regardless of the grounds of origin.

In the meaning of a branch of national law, civil law can be defined as a set of concepts, ideas and legal norms which set the status of a private individual and ensure protection of their interests on the principles of optionality, legal equality and initiatives of parties.

The characteristic features of civil law as a branch of national law is that it:

1) is a manifestation of private law at the national level;

2) is a set of concepts and legal ideas, principles embodied in acts of legislation and other norms;

3) serves to the purposes of ensuring of realization of subjective civil rights to their owners.

The main role in determination of civil law as a branch of law is played by its subject, method, functions, principles, and categories.

Property relations; personal non-property relations associated with property ones; and other personal non-property relations that are based on legal equality, free will, property independence of their participants are recognized as the subject of civil rights. Under the civil law, there are three categories of property. Most people have two types and some have all three.

Real property is land and buildings. Anyone who owns a house or a condo owns real property. (A mobile home is not real property because one does not own the land the vehicle sits on.)

Personal property is divided into two categories:

Intangible personal property is cash and its equivalents: mutual funds, stocks, insurance policies, savings and checking accounts, even the wad of bills you may have stuffed in your sock drawer.

Tangible personal property is a large category of what people own. It’s anything you can touch. It’s the picture card collection, jewelry, furniture, housewares, clothes, automobiles, coin and stamp collections.

By its nature, property relations are characterized by the following features:

1) they are economic, i.e. they have money-commodity character;

2) they arise and exist between the participants who possess proprietary independence and legal equality;

3) they provide satisfying of mostly material needs and interests.

The most common criterion of property relations in civil law can be divided into:

1) property relations at to belonging of property (relations of statics), such as relations of ownership, possession, use;

2) property relations as to fixing of the process of property transition (relations of dynamics), for example, relations under contractual obligations, commitments as to injury, etc.;

3) property relations on management of a corporation (corporate relations), for example, relations for management of private property by members of corporations (JSC, LLC, etc.);

4) property relations as to creation and use of intellectual property (exclusive relations), for example, relations on use of works of literature, science and art, inventions, utility models and industrial designs, etc.

Non-property relations also take a significant part in the subject of civil regulation. These legal relations as a subject of civil law are quite "young” since they are first officially recognized in that rank only in the CC of Ukraine. Features of non-personal relationships are the following:

1) they are closely related to personality of their participants;

2) they are non-property, that is their content cannot be determined in money or other property equivalent;

3) they arise and exist between legally equal participants;

4) they provide satisfaction of mainly internal (spiritual) needs and interests.

Method of civil regulation is a set of specific means of effect on participants in civil relations that are characterized by legal equality of parties, as well as provision to the latest an opportunity of solution of these relations at their discretion with the exceptions established by civil legislation.

Obligation to compensate a damage, to return the property obtained without grounds, etc.) is typical for the method of civil regulation in most cases. This method is called dispositive method, unlike imperative method – characteristic for administrative law (public law in general).

Civil method of regulation of civil relations is a complex category, which has the following features:

1) legal equality of participants, their autonomy and independence, which means that participants of relevant legal relations have legally equal opportunities to acquire and exercise civil rights and create and perform civil duties, and they are not in any legal dependence between each other (authoritative subordination);

2) optionality in choice of behavior of members of civil relations, this means that parties can act initiatively, freely, in their own discretion, based on their own interests and purposes;

3) judicial dispute settlement, which means that they are able to settle any disagreement between members of civil relationships in court;

4) property-compensational nature of measures of enforcement effect on the offender, which means that the participant of legal relations that is not performing his duties violates the rights of other participants of civil relations or creates barrier as to their proper implementation, use of means of protection, not beneficial in terms of property for the offender, which are mainly of property character, which is directed to restoring of the violated right, legally protected interest or welfare of the victim party.

Thus, the method is a defining category, meaning that even if relations are proprietary by their content, but based on administrative or other authoritative subordination of one party to the other, for example, financial, tax, budget, etc, they are not related to the subject of civil regulation (Article 1 (2) of the CC of Ukraine).

Principles of civil law are basic principles, the most general guidelines (principles) of civil law that have obligatory nature by virtue of their legal assignment. The meaning of civil law principles lies in the fact that they:

1) reflect essence of social orientation and major branch features of civil regulation, i.e. each further norm in its content must be penetrated by the principle of civil law;

2) are taken into account when concluding non-nominate contracts (Article 6 (1) of the Civil Code of Ukraine);

3) are taken into account when applying the analogy of law (Article 8 (2) of the Civil Code of Ukraine);

4) are taken into account when protecting the legally protected interest (Article 15 (2) of the Civil Code of Ukraine).

The following civil law principles are set in the Article 3 of the Civil Code of Ukraine:

1) inadmissibility of arbitrary interference in the sphere of private life of a person, i.e. no one has the right to interfere into personal and family life of an individual without his consent, unless explicitly stipulated by the Constitution of Ukraine. This principle stipulates conditions for protection of privacy of an individual from undue external interference to ensure his internal (spiritual) interests;

2) unacceptable deprivation of property rights, except as prescribed by the Constitution of Ukraine and the law, meaning that property right is inviolable in Ukraine. This principle provides a person with guarantee of economic independence and property separation from other participants of civil relations. However, in some cases directly prescribed by law, this principle may be subject to certain restrictions, when it is directly derived from the Constitution of Ukraine, such as depriving a person of property due to confiscation or forced alienation of private property for reasons of social necessity (Article 41 of the Constitution of Ukraine);

3) freedom of contract, this principle means that members of civil relations are free in possibility of entry into contractual relations and choice of the kind of contracts (both nominate and non-nominate), contractors and contractual terms, etc. In some cases, prescribed by law, this principle is subject to appropriate limitation, such as making previous or public contracts, etc. This principle provides a person with a possibility to initiatively enter into contractual relations at his own discretion, based on his own interests;

4) freedom of entrepreneurial activity that is not prohibited by law means that individuals are free to choose business. However, in some cases directly provided for by law, a person may be limited in his freedom of business, for example, under subject’s content (deputies, officers and employees of state and local governments) or nature of business (establishment of monopoly), etc.;

5) judicial protection of civil rights and interests, i.e. in case of violation of civil rights or interests, as well as in the case of creating obstacles as to their implementation, a person has the guaranteed opportunity to defend them in court. This person has the right to defend civil rights and interests both in courts of general jurisdiction and in specialized courts and arbitrations.

6) fairness, good conscience and reasonableness, this principle means that regulation and protection of civil relations should take place fairly, honestly and wisely.

The functions of civil law are main directions of its impact on civilrelations in order to compile and implement the latter. Main functions of this branch of law are traditionally identified as: regulatory, protective and educational.

The system of civil law as a branch must include:

1) civil provisions that are specific rules of behavior. The peculiarity of such rule of behavior is that the vast majority of civil norms has permissive nature, i.e. gives persons a choice of options of behavior. This significantly affects the structure of a civil norm, as such its element as a sanction is either absent or is more universal than other branches of law;

2) civil institutions, i.e. a group of civil rules governing homogeneous social relations. Thus, property rights institution, institution of delictual liability, etc. should be considered civil institutions;

3) civil sub-branch, which is a set of institutions governing the homogeneous social relations, such as sub-branch of property law, contract law, etc.

The structure of civil law as a branch of law includes:

1) General part that contains civil norms extending the application on the whole range of civil relations and concern the sources of civil law, subjects, objects, contents and grounds of change and termination of civil relations, exercise of civil rights and their protection, etc.;

2) Special part that contains civil norms extending the application only on certain legal relations and concern regulation and protection of personal non-proprietary rights, proprietary and contractual right, intellectual property rights, inheritance rights, etc.

Existence of two main systems of organization (structure) of private law – institutional and pandect – was traditional for private (civil) law.

Institutional system of organization (structure of civil law) includes the following institutions: persons, things, and means of buying things.

Pandect system consists of the following parts: general provisions, property law, contractual law, family law, inheritance law.

In particular, it covers:

1. General provisions.

2. Legal status of a person.

3. Property rights (Rights to things).

4. Intellectual property rights.

5. Agreements (contractual obligations).

6. Non-contractual obligations.

7. Inheritance law.

8. Family Law. (In Ukraine, it is traditionally treated as a separate branch, but in fact it belongs to the sphere of civil law).

Speaking about the structure of civil law, it should be noted that differentiation of it into general and special parts is arguable. This differentiation is impractical, because there is no universal "general part” in civil law. However, the "general part” consists as if of two levels: there are provisions common to the whole civil law and there is a general part of obligatory law. Moreover, the third level – general part of contractual law, general part of non-contractual obligations, general issues of inheritance law, etc – is possible. Therefore, it is always impossible to separate the "general part” as such.

Part 3. Property/Ownership as a category of civil law

Categories in focus:

A) Property in the legal sense

B) Ownership of property

In the abstract, property is that which belongs to or with something, whether as an attribute or as a component of said thing. Property is frequently defined as the rights of a person with respect to a thing. The English word property derives either directly or through French propriété from Latin proprietas, which means “the peculiar nature or quality of a thing” and (in Roman writings after the time of Caesar Augustus) “ownership.” The word proprietas is derived from proprius, an adjective meaning “peculiar” or “own,” as opposed to communis, “common”.

Strictly speaking, ‘property’ is a general term for the rules that govern people’s access to and control of things like land, natural resources, the means of production, manufactured goods, and also (on some accounts) texts, ideas, inventions, and other intellectual products.

Property, in the legal sense, can mean real property in the form of land and buildings, or personal, movable property. Individuals may own property directly. In some societies only adult men may own property. .In most societies both men and women can own property with no restrictions and limitations at all.

There are three species of property arrangement: common property, collective property, and private property. In a common property system, resources are governed by rules whose point is to make them available for use by all or any members of the society. Collective property is a different idea: here the community as a whole determines how important resources are to be used. Private property is an alternative to both collective and common property. In a private property system, property rules are organized around the idea that various contested resources are assigned to the decisional authority of particular individuals (or families or firms).

Property is (criteria identified by law):

• Susceptible to economic/exchange value and monetary terms

• Susceptible to appropriation / can be possessed

• Not human: an antithetical relationship between property and the human

• Materiality is an unreliable criterion for property

• Object of rights.

We can refer to a material thing as an object, but property is also viewed as a right that bears upon the thing, e.g. the right of ownership. This renders all property intangible b/c the concept of a right is intangible. We view property in terms of its relationships with the holder.

From January 01, 2013, a new State Register of Property Rights to Immovable Property (“Register of Property Rights”) has been launched. Unlike the State Land Cadastre, which automatically absorbed information about all existing land plots from the (no longer active) State Register of Lands, the Register of Property Rights does not contain information about the ownership rights to immovable property which have been registered before January 01, 2013. For this reason, prior to execution of the Property sale and purchase agreement, the Seller has to register ownership rights to the Property in the new Register of Property Rights.

Registration of Seller’s ownership rights to the Property is performed by the notary attesting the sale and purchase agreement. The Seller shall provide to the notary:

– ownership documents to the Property;

application in accordance with established form;

documents confirming payment of registration fees.

The notary: (1) checks the Seller’s ownership documents; (2) records Seller's ownership rights in the Register of Property Rights; and (3) issues an extract from the Register of Property Rights confirming Seller’s ownership rights to the Property. "

Whether or not an object constitutes property appears to be a socio-political choice and a cultural phenomenon. Property is very much a Western, individualistic concept: the distinction between persons and things. In other cultures, there is less division between individuals in terms of property rights (e.g. social ownership) and less division between humankind and nature.

The discussion of property hinges on identifying the objects (things) and subjects (persons and groups) of the jural relationships with regard to things in legal systems generally. There follows a treatment of possession and ownership, categories that are closely related historically.

Determining ownership in law involves determining who has certain rights and duties over the property. These rights and duties are sometimes called a “bundle of rights”. Ownership is the ultimate and exclusive right conferred by a lawful claim or title, and subject to certain restrictions to enjoy, occupy, possess, rent, sell, use, give away, or even destroy an item of property. Ownership may be corporeal (title to a tangible object such as a house) or incorporeal (title to an intangible object, such as acopyright, or a right to recover debt). Possession (as in tenancy) does not necessarily mean ownership because it does not automatically transfer title.

The process and mechanics of ownership are fairly complex: one can gain, transfer, and lose ownership of property in a number of ways. To acquire property one can purchase it with money, trade it for other property, win it in a bet, receive it as a gift, inherit it, find it, receive it as damages, earn it by doing work or performing services, make it, or homestead it. One can transfer or lose ownership of property by selling it for money, exchanging it for other property, giving it as a gift, misplacing it, or having it stripped from one's ownership through legal means such as eviction, foreclosure, seizure, or taking. Ownership is self-propagating in that the owner of any property will also own the economic benefits of that property.

Sole ownership occurs when a single person owns a complete interest in a property or asset. Ownership is conveyed from one person to another through transfer documents, or by the laws of intestate succession. If the owner passes away, his or her interest in the property or the asset is included in the estate. Estate taxes and probate fees could diminish the value of that property if no other planning has taken place. One positive fact is that the beneficiary of the property receives a full step-up in basis value. This means there will be no capital gain to worry about if the heir sells the asset because the heir receives the property at current market value.

Joint tenancy is when two or more persons share equal, undivided interests in property. Joint tenancy is not limited to spouses – anyone can share joint interests, but there is a tax benefit when this arrangement is shared only between husband and wife (qualified joint tenancy). When an asset is owned by spouses, the value of the deceased spouse’s property passes to the surviving spouse with no probate and no tax consequences. This is similar to the process of joint tenancy with rights of survivorship. A joint property interest cannot be passed through traditional documents, such as a trust or a will. If one owner dies, then the ownership interest passes directly to the surviving owner.

Therefore, ownership is the legal relation between a person (individual, group, corporation, or government) and an object. The object may be corporeal, such as furniture, or completely the creature of law, such as a patent, copyright, or annuity. It may be movable, such as an animal, or immovable, such as land. Because the objects of property and the protected relations are different in every culture and vary according to law, custom, and economic system and the relative social status of those who enjoy its privileges, it is difficult to find a least common denominator of “ownership.”

Ownership of property probably means at a minimum that one’s government or society will help to exclude others from the use or enjoyment of one’s possession without one’s consent, which may be withheld except at a price.

Part 4. Moral Rights of Individuals

Categories in focus:

A) What are moral rights

B) Moral rights characteristics

C) Intellectual property: types and characteristics

Philosophers distinguish between legal rights and moral rights. Legal rights are liberties or protections individuals have because some law says they do. For obvious reasons, legal rights do not come into being on their own; they have to be created through law. So one defining characteristic of legal rights is that they are made by human beings; as such, humans can unmake them too.

The term "moral rights" is a translation of the French term "droit moral," and refers not to "morals" as advocated by the religious right, but rather to the ability of authors to control the eventual fate of their works. The concept of moral rights thus relies on the connection between an author and his/her creation. Moral rights protect the personal and reputational, rather than purely monetary, value of a work to its creator.

Moral rights characteristics differ from legal rights. First, humans do not make moral rights, nor can we unmake them. Second, moral rights are not limited to the citizens of a particular nation, at a particular time. Moral rights (for example, our rights to life, liberty, and bodily integrity) are universal and timeless. Belief in moral rights is pervasive throughout representative democracies today.

Every serious advocate of human rights not only believes that individual moral rights are important; more, we believe that our rights are the most important moral consideration we can think of. Possession of moral rights confers a distinctive moral status on those who have them. To possess these rights is to have a kind of protective moral shield. First, others are not morally free to harm us; to say this is to say that others are not free to take our life or injure our body as they please. Second, others are not morally free to interfere with our free choice; to say this is to say that others are not free to limit our free choice as they please. In both cases, moral rights protect our most important goods (our life, our body, our liberty) by morally limiting the freedom of others.

The next characteristic of moral rights concerns their equality. Moral rights are the same for all who have them, which is why no human being can justifiably be denied rights for arbitrary, prejudicial, or morally irrelevant reasons. Race is such a reason; to determine which humans have rights on the basis of race encapsulates a particularly virulent strain of prejudice. What race we are tells us nothing about what rights we have.

An important thing to notice is the relationship between moral duties, on the one hand, and moral rights, on the other. Some of our duties are so important, they carry rights with them. Evidently, everyone understands the idea of having a duty (to tell the truth, for example, or to keep one’s word). Some of our duties are so important they give rise to rights.

In the world of intellectual property – specifically copyright – moral rights are a special set of rights that are owned by the author or creator of a work by virtue of their role as the author or creator.

Moral rights are:

• the right of attribution of authorship. The author has the right to be identified as the author of the work or film when it is presented to the public. The attribution must be reasonably clear and prominent;

• the rights against false attribution of authorship. The author has the right not to have their work attributed falsely to someone else and not to have an altered work being attributed as unaltered;

• the right of integrity of authorship. The author has the right to have the integrity of their work respected and not subjected to derogatory treatment. A treatment is derogatory if it in some way prejudicially affects the honour or reputation of the author.

Moral rights are granted to authors of: literary, dramatic, musical and artistic works or films.

An author of works and films for moral rights purposes is different from the author of works and film for copyright purposes. An author of a film for moral rights purposes includes the screenwriter, director and the individual producer.

Moral rights are granted to individuals only and cannot be held by corporate entities, trusts or associations. Moral rights are separate from copyright and unlike copyright, cannot be waived, sold, assigned or licensed or transferred. They remain with theauthor even where the copyright has been sold or passed to a third party.

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

Patents

A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document.

Trademarks

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when craftsmen used to put their signature or "mark" on their products.

Industrial designs

An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

Geographical indications

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.

In order to avoid moral rights infringements, education institutions should:

• attribute the author of the work or film where reasonable. For example, crediting the name of the author and title of the work on material that is reproduced or communicated to the public;

• attribute authors of musical and dramatic works where the works are performed at concerts and other performances either in the program or by announcement;

• not alter, add to, crop, edit, change, distort or mutilate the work or film of the author unless it is reasonable in the circumstances;

• obtain a written consent to such acts or omissions that would otherwise infringe the author’s moral rights. Consents should be addressed in all contracts that deal with copyright material such as commission or freelance agreements, employment agreements and licence agreements.

Part 5. Contracts

Categories in focus:

A) Contracts: terms and conditions of the contract validity

B) Contract wariness

C) Civil liability

In legal terms a contract is a binding agreement between two or more persons or parties. A contract is an agreement creating obligations enforceable by law. A contract can be anything from a formal written document to a purely verbal promise. For example, a contract could be made simply because of a handshake deal to do a job where the only thing in writing is a quote on the back of an envelope. Whatever its form, if you agree to provide a service to a hirer for money, you have entered into a contract. You are promising to do a job for the hirer and the hirer is promising to pay you for it.

A contract is a verbal or written agreement to do work in exchange for some benefit, usually a payment. The agreement is able to be enforced in the courts. The basic requirenments of a contract are mutual assent, consideration, capacity, and legality. Types of contracts can include: Written contracts; Verbal contracts; Standard form contracts; Period contracts.

A valid contract normally contains the following basic elements:

Intention to create legal relations

It is generally presumed that in a commercial transaction, the contracting parties must have the intention to create a legally binding contract. In other words, if you have signed a contract for business-related activities, then you will be able to sue the other party if that party does not fulfil the contractual provisions, and vice versa.

Offer

An offer is an expression of readiness to do something which, if followed by the unconditional acceptance of another person, results in a contract. It is also important to note that the offeror cannot take silence as a form of acceptance. This means the offeror cannot say "If I do not hear from you within 10 days, then I will assume that you have accepted my offer and will pay for the product".

An offer must be distinguished from an "invitation to treat", which merely invites other people to make offers but is not in itself an offer.

Acceptance

There is no contract unless and until the offer is accepted by the person to whom the offer is addressed (sometimes called "the offeree"). Acceptance is normally made orally or in writing, but if the contract allows that the acceptance and performance of contractual duties are to be carried out simultaneously, then acceptance can also be made by conduct. If the method of acceptance is not specified by the offeror, then the following rules may apply.

• Postal Rule – If it is reasonable to use the post for the offer and acceptance process, then the contract is formed at the time of posting the letter of acceptance, even if the letter is lost in the post.

• Receipt Rule – When an acceptance is sent by fax, it is deemed to be valid when the message is received, even if the offeror does not in fact read the fax immediately. This rule also applies to e-mail messages.

Another important point to note is that a conditional (or partial) acceptance is only a "counter-offer" and does not constitute a valid contract. In other words, if the person to whom the offer is addressed only accepts some of the terms or proposes some new terms, then that person is not accepting the offer but is making a new offer to the other party. In the business world, there may be a series of counter-offers before a final acceptance comes out.

Before the contract is signed, the parties confront each other with a natural wariness. Neither expects the other to be particularly forthcoming, and therefore there is no deception when one is not. Afterwards the situation is different. The parties are now in a cooperative relationship the costs of which will be considerably reduced by a measure of trust.

Therefore, if you are unsure about anything related to a contract get advice before you sign or agree to new work, even if you have performed work for that hirer previously. Then:

Read every word before you sign

Read the fine print carefully and get advice about any terms you don't understand before you sign. Once you sign a contract you are bound by all of its terms. If there is an indemnity clause, don't sign until you understand the risks you are agreeing to accept if something goes wrong.

Cross out any blank spaces

Don't leave any spaces blank. If you don't need to fill in a blank space, always cross it out so the contract can't be changed after you sign it.

Negotiate

You have the right to negotiate any contract before signing, including a standard form contract. But remember that both parties must agree to any changes and record them in the contract you sign. Your union or industry association or a lawyer can help you prepare for negotiations.

Keep a copy

You should always have a copy of any contract you sign. It is best if you and the hirer sign two copies of the contract, so that you can both keep an original. If this isn't possible, ask for a photocopy and check that it is an exact copy. Remember to keep your copy somewhere safe for future reference.

A lawyer, your union or industry association might be able to provide you with information about some common standard terms used in contracts in your industry. They may also be able to provide you with a standard form contract for you to use.

Before you agree to start a new job under the contract template, check whether the terms and conditions are the same as those set out in the original contract template. If not, don’t take on the work until you are happy with the changes to the contract.

Note that a promise of a gift is not enforceable in law because of the lack of mutual exchange of consideration (the recipient does not have to pay anything in return). An exception to this rule is when a contract is executed in a specific form called a "deed", in which case the recipient may not be required to give consideration to the other party.

If you intentionally or even just mistakenly injure someone or damage someone’s property, you could end up being responsible for paying for the other person’s losses. This is known as "civil liability."

A person who suffers damage or injury from the bad acts and even accidents of others can seek financial remedies in civil court. Let us consider the following:

Civil vs. Criminal

A civil action is a lawsuit filed by a private person (not the government) against another private person. Usually these lawsuits seek monetary damages for injury or loss that the party suing (the plaintiff) alleges the party sued (the defendant) caused. A defendant who loses in a civil action does not face the risk of prison or fines. A classic civil lawsuit would be a lawsuit by a homeowner against his neighbor, seeking damages (money) for the ruination of his car due to the neighbor's falling tree.

Civil actions are categorized according to the type of injury or damage involved. They include "torts" (a French word that simply means "wrong," such as personal injury and wrongful death), contract disputes, product liability claims, and business disputes (such as patent infringement claims). See the sections below for more on these types of civil cases.

Liability

As used in the term “civil liability,” the word liability means responsibility for the harm alleged by the plaintiff and the damages suffered. A person found liable in a civil action, upon a verdict in favor of the plaintiff, must pay whatever monetary damages the jury (or sometimes the judge) awards to the plaintiff.

Breach of Contract: Not following the contract

A huge portion of the civil lawsuits arise out of disputes between parties to a contract. Generally speaking, the plaintiff in such actions alleges that the defendant has failed to comply with some term(s) of the contract, causing damage to the plaintiff.

Intentional Torts: Purposeful acts

Some civil wrongs result from intentionally “bad” acts by defendants, such as intentional misrepresentation (fraud), defamation, and employment discrimination. In these cases, the plaintiff must prove that the defendant purposely engaged in certain conduct, for example, by offering evidence that the defendant had spread false rumors that the plaintiff had engaged in a crime, knowing that the rumors were false.

Negligence Liability: Accidents

Not all civil actions involve intentional conduct by the defendant. Plaintiffs in many civil cases allege that the defendant acted negligently and that this negligence caused their injuries or loss. In such cases, the plaintiff need not show any intent at all on the part of the defendant. But, the plaintiff must show that the defendant had a duty to exercise due care in taking the action he took that injured the plaintiff, and that he failed to take such care.

Damages

As mentioned above, the only penalty a defendant in a civil action faces is financial (except in the rare cases where a court awards injunctive relief, as mentioned below). An award in a civil action may include:

• reimbursement of monies the plaintiff lost due to the defendant’s actions

• compensation for damage to property caused by the defendant

• reimbursement of monies due to the plaintiff for defendant’s breach of a contract

• reimbursement of medical expenses for injuries caused by the defendant

• compensation for pain and suffering (also called “emotional distress damages”)

• in some intentional tort cases (such as employment discrimination) in some states, punitive damages to punish the defendant and deter others, and

• in some states and for some torts (or if agreed to by contract), payment of the side's attorneys fees.

Ask an Expert

Civil liability covers a lot of territory, and liability, burdens of proof, and possible damages depend upon what happened and in what state. If you have questions about a particular tort or civil action, contact a lawyer with experience in personal injury or other civil litigation in your area.

Ukraine law does not distinguish between property rights or right of ownership in regards to non Ukrainian citizens versus Ukrainian citizens. Foreigners purchase real estate using the same process. However, non Ukrainian citizens are at the moment not allowed to purchase land.

**THEME 10: CRIMINAL LAW FUNDAMENTALS**

Part 1. Criminal Law Overview

Categories in focus:

A) Criminal law

B) Principles of criminal law

Criminal law is a branch of law that concerns crimes committed against the public authority. It is distinct from civil law, which involves crimes people commit against each other, not necessarily against the public as a whole. Criminal law is a category of public law that punishes behaviour that results in injury to people and/or property. Murder, for example, is a criminal matter because, although there is a specific victim, murder in general runs against the interests of the public. By contrast, if someone fails to honor a contract, this is a matter for civil law.

Substantive criminal law deals with the definitions of various crimes that are covered by thecriminal code, while procedural law is concerned with the prosecution of said crimes. Procedural law may also include sentencing recommendations that are designed to be used in the event that a victim is convicted of committing a crime. Under many criminal codes, convictions can only be obtained when the prosecution proves beyond a reasonable doubt that the accused did indeed commit the crime.

Principles of criminal law are: "Presumption of innocence" – a principle of the criminal justice system. The accused is presumed to be innocent until proven guilty. "Burden of proof" means that it the Court’s responsibility to prove that the accused is guilty. The defence lawyer does not have to prove that the accused is innocent.

"Beyond a reasonable doubt" is the expression used when determining the likelihood that the accused committed a crime. The Court must prove that the accused is guilty and there cannot be any reasonable doubt about it in the minds of the judge or jury. If there is a reasonable doubt then the accused must be found not guilty.

In every nation, the ideal is to deter criminals from committing acts that violate the interests of the public or the nation, and deterrence is a major feature of the criminal code. Given that reducing the crime rate to zero is unlikely, the code also deals with the proper containment and management of criminals, including rehabilitation of people who commit criminal acts. Measures for some form of punishment are also a key part of the law, warning people who consider engaging in criminal activity that their actions have consequences, and for some types of crime, restitution to victims and their families may also be built into the law.

Also known as penal law, criminal law is used all over the world to establish basic codes of conduct for citizens and as the basis of a legal system. Some lawyers specialize in criminal matters, whether they are prosecutors or defenders, and this type of law also lays the groundwork that allows police forces, courts, and other aspects of the legal system to function.

Part 2. Types of Crimes

Categories in focus:

A) Crimes: types and elements

B) Criminal intent

A crime is a wrong which affects the public welfare, a wrong for which the state has prescribed a punishment or penalty. It is an act or omission prohibited by law because it is injurious to the public. Three broad types of crimes appear in the criminal code: misdemeanors, felonies, and treason. Treason is of particular concern because it not only violates the public interest, but also threatens national security and the welfare of the nation itself, which is why treason is accompanied with such severe penalties. Misdemeanors are relatively minor crimes, while felonies are more serious crimes which may accompanied with severe mandatory sentences.

A crime occurs when an individual breaks one of our criminal laws. Every crime is composed of criminal elements. The fundamentals of criminal law are known as the actus reus (a criminal act) and the mens rea (a criminal intent) of the crime.

Actus reus is Latin for guilty act (doing that which is prohibited) and is the physical element of committing a crime. The physical act of committing an offence (actus reus) is more than an act, it can be an omission to act or a "state of being." Omissions to act can also be crimes (a failure to act when required to do so by law).

If a parent fails to provide the basic necessities for children’s survival the failure to provide is an omission and a crime. The majority of crimes are acts or kinds of misconduct. Proof of the physical element requires more than simply determining an act, omission or state of being exists. It is necessary to consider the four C’s – conduct, consequences, circumstances and causation. The conduct must be as described earlier an act, omission to act or a state of being as outlined in a specific section of the criminal charge. Of particular importance to the concept of conduct is that it is voluntary. The law will not hold someone criminally responsible for an involuntary act. Consequences refer to the outcome of a specific act. For a homicide the consequence would be the death of a human being.

The circumstances aspect of the actus reus refers to the relevant circumstances under which an act must occur to be criminal. In the case of the crime of trespassing at night the relevant circumstances would be that the act occurred at night, on someone’s property other than your own and that you entered the property without consent or lawful excuse.

The final element is causation, meaning that the conduct of the accused person must be shown to have caused the consequence (the criminal act) to occur. Mens rea is another Latin phrase meaning guilty mind. This is the mental element of the crime. A guilty mind means an intention to commit some wrongful act. The physical act represents one element in the commission of a criminal act while the guilty mind represents the second key element. The guilty mind refers to the intention, knowledge or recklessness of the accused. Essentially the law states that we must mean to cause a wrongful consequence.

Intention is commonly used in the Criminal Code to establish a type of guilty mind. Words like "willfully," "means to" or "intentionally" are used to describe a state of mind. There are two basic types of intention-specific and general. Specific intent offences frequently use the phrase ‘with intent’ or ‘for the purpose of’ to demonstrate a specific purpose behind the crime. General intent crimes are those that do not require a further purpose or intention and are often crimes committed in moments of uncontrolled passion or aggression.

The knowledge form of a guilty mind means that the accused must have knowledge of the specific circumstances of the crime. The phrases "knowingly" or "knowing" are commonly used here to indicate a specific type of knowledge.

The third kind of intent is recklessness. This is type of intent is found in crimes like dangerous driving causing death. It means that the accused has been unduly careless in their actions by not exercising good judgment and foresight. Motive may be used to establish intention and can be used in sentencing to mitigate or aggravate the sentence depending on the reason for committing the crime.

Part 3. Crimes in the Sphere of IT Technologies

Categories in focus:

A) IT Crimes

B) Criteria of IT crimes classification

Information technology is the main tool for different crimes perpetration. Specific types of computer crimes inflicting severe damage to individuals and businesses include the following:

– access to computer information without protection penetration; actions that caused the consequences specified in Article 361 of the Criminal Code of Ukraine, if they were not proceeded by unauthorized intrusion in operation of the information processing resources (for example, powerful electromagnetic radiation effect); familiarization with the information processed in computers, automated systems, computer networks or telecommunication networks without the fact of unauthorized intrusion (with regard to Article 361 of the Criminal Code of Ukraine);

– creation, distribution and sale of the software not intended for unauthorized intrusion and harmful properties of which can show up without intervention in operation of computer (computers), automated systems, computer networks or telecommunication networks, in particular, this is about computer viruses (with regard to Article 3611 of the Criminal Code of Ukraine);

– sale or distribution of restricted data that was created with violation of the applicable law; sale or distribution of restricted data that was received from protected computer network by protection system penetration but at the time of distribution this information was not protected already by the special hardware, for example, illegal distribution of electronic databases containing personal data (with regard to Article 3612 of the Criminal Code of Ukraine);

– information interception in the course of the information transmission via telecommunication networks; illegal information output to computer (computers), automated systems, computer networks or telecommunication networks (with regard to Article 362 of the Criminal Code of Ukraine);

– distribution of the so called SPAM (due to the reason that these acts do not disrupt or shut not down computer (computers), automated systems, computer networks or telecommunication networks); mass distribution of the signals that do not contain any specific information for anyone by telecommunication networks resulted in malfunction or shut down of computer (computers); the act causing distortion of data processing (with regard to Article 3631 of the Criminal Code of Ukraine).

In addition, no rules within any company, agency or organization governing operating procedures for computer, automated system, computer networks of telecommunication networks and the rules and the procedures for protection of non-state information exclude the presence in the persons acts of the component of crime provided for by Article 363 of the Criminal Code of Ukraine.

Undoubtedly, criteria of criminalistic classification of criminal are assigned to assist systematization of computer crimes. Thus it is possible to solve the common tasks of investigation and counteraction to such crimes by using typical descriptions of separate groups of criminals. For the solution of this question it is expedient to use criminological typology of criminals.

Criminologists consider typology as deep description of different groups of criminals, in which they conventionally select features-displays and features-reasons which provide substantial character of dividing total into groups .

In criminology the following division into groups of features is the most spread:

• social-demographic;

• criminal legal;

• psychological features;

• physical (biological) features.

These features are general for the examination of criminal. Establishment of the mentioned circumstances will allow getting complete description of computer criminal. However that is not enough for receiving criminalistic data on internal life of members of the organized criminal group, their typological features. These questions are yet not enough explored in criminalistics and theory of secret search activity.

The circle of computer criminals is not limited. Anyone can be a criminal: a head of enterprise, system administrator, manager and ordinary user of computer system. A criminal is the minimum total of features, characterizing a person committed a crime, it is necessary for making this person responsible. Personality qualities of a person and environment in the co-operation consistently exactly determine motivation of criminal activity decision-making in sphere of computer technologies. Motivation includes a process of emergence, forming of reason and purpose for criminal conduct. It is necessary to examine the reason of criminal conduct as compulsion, that was formed under influence of social environment and personal vital experience, which is the internal direct reason of criminal activity, and expresses attitude of a person to the object of criminal activity.

Criminal law of Ukraine identifies three groups of features, which characterize a criminal:

1. Individual (citizens of Ukraine, foreigners, persons without citizenship – Articles 4, 5 of the Criminal Code).

2. Criminal personality – the person attains age set by criminal law.

3. Criminal sanity of a person – ability to assess and manage own actions.

All features of criminal as element of crime according to the criminal legal assignment are divided into general and special. General, obligatory for all crime components, is the age of criminal responsibility and sanity, set by law. Special, additional features peculiar only to some of crime components are the optional features. Social and political description of a person also can be the feature of criminal as element of crime, but not direct, it is displayed in concrete properties and acts – repetition of crime commitment, previous conviction, etc.

"Professional" habits and handwriting of criminals become apparent in certain ways, methods and techniques of crime commitment. The traces left at the place of crime testify the features of their social psychological portrait: age, sex, knowledge, occupation, experience, etc. Forming of standard models system of different criminal categories allows optimizing the exposure of persons circle, among which search of the criminal will be the most probable. Collected in the process of investigation data on personality of criminal, his criminal conduct and guilt, creates actual base for taking well-founded legal decisions according to his criminal proceeding.

Great number of people is involved in electronic criminality – from highly skilled specialists up to beginners. Offenders can be engaged in different spheres of activity and have different level of training. But crimes are carried out more often by persons who have high enough qualification, especially, when the question is about illegal access to information in computers, systems or networks, as similar requires difficult technological and information measures. Therefore, the more difficult and more "skilful" method of illegal access is, the narrower is the circle of probable criminals.

All of these methods can be divided into two large groups:

1. Persons which have labour or other business relations with a victim.

2. Persons not connected by business relations with a victim.

The first group covers employees abusing official position. They are clerks of various types, workers of security and supervisory services, engineering personnel. The potential threat is represented by officials of other organizations which are engaged in service and exploitation of systems.

Foreign experts divide personnel that represent certain danger into categories according to spheres of their activity:

1. Operational crimes, accomplished by operators of computers, peripheral units of information input and attendants of telecommunication.

2. Crimes usually committed with help of software by persons that usually use it, by system and application programmers, well-trained users.

3. Hardware of computer systems is often exposed to crimes committed by: system administrators, engineers of electronics and telecommunications.

4. Employees engaged in management, control of computer network and operators of databases that work with software.

5. Such threat can be also represented by different clerks, workers of security service, workers who control computer operation.

The special danger is represented by specialists in case of their plot with the heads of departments and services of institution, and also with the organized criminal groups, as in such cases the caused harm and weight of consequences are much greater.

Individuals, who possess essential knowledge in sphere of computer technologies in most cases they purpose mercenary motives belong to the second group. Also the same group covers professionals which perceive security means of computer systems as challenge to their skills.

Most computer crimes are accomplished intentionally. Software developers and specialists of security services practically reduced possibility of casual or careless harm for interests of users.

Commitment of crimes by employees of organizations, which hold responsible positions, exists too. Experts note that more than 25%% of computer crimes are committed by heads of organizations. Modern leaders, as a rule, being specialists of high level, possessing sufficient computer and professional knowledge, have access to information of wide use and can make orders, but are not directly responsible for work of computer systems.

According to Article 20 of the Criminal Code of Ukraine a criminal, definition provided for by part 1 of Article 361 of the Criminal Code of Ukraine, is any individual which at the moment of committing a crime attained age of sixteen years. It is general criminal legal personality. The obligatory condition of making the criminal responsible for the committed socially dangerous and illegal action is its sanity – ability to understand social significance of own actions and to manage them. Irresponsible persons are not subject to criminal responsibility (Article 21 of the Criminal Code of Ukraine).

Part 4. Punishment and its Types

Categories in focus:

A) Approaches to deter crimes

B) Accessories to a crime

C) Purposes to the punishment

D) Crime prevention

Crimes are punished according to the seriousness of the act, and often take into consideration the prior criminal history of the defendant. Legal scholars, judges, and lawmakers – and the public – do not agree on the answer to the question of punishment:

• We punish to deter future crimes. Under this theory, punishment serves the twin goals of preventing the wrong-doer from offending again (at least while in prison), and serving as a model to others, who presumably will take heed and not commit the crime themselves. As to the latter point, this assumes that nascent criminals act according to their pleasures and pains—that they will weigh the consequences of a criminal act, balancing them against the benefit the act may bring, and hedonistically decide that the crime isn’t worth the benefit. Working to rehabilitate criminals fits into this theory, as a reformed criminal is no longer tempted to reoffend.

• We punish to exact retribution. This approach punishes criminals because they deserve it, having morally offended society. The goal (though not necessarily the reality) is to “let the punishment fit the crime.” This theory assumes that the criminal possesses free will, has chosen a path of crime, and must now suffer his “just deserts.”

Punishment in Ukraine focuses on custodial and non-custodial sentencing. This means that individuals can either be sent to prison or can serve their sentence in the community.

A custodial sentence is a sentence requiring the convicted party to go into custody in a jail, prison, youth center, mental hospital, or similar facility. This differs from a non-custodial sentence, where people serve their time on the outside, although they may need to attend mandatory counseling and other sessions to fulfill the terms of the sentence. Non-custodial sentences are sometimes referred to as alternatives to prison. These sentences are often used to deal with less serious crimes and might involve community work, whereby offenders are able to ‘pay back’ society.

Prison is perhaps the most recognisable form of punishment used today. A custodial sentence may also be imposed where the court believes it is necessary to protect the public. The length of sentence depends on the seriousness of the offence and the maximum penalty for the crime allowed by law. Essentially, the punishment is a loss of liberty, but it is important basic rights are protected for people in custody. The purpose of prison varies significantly in the eyes of different people who place different emphases on factors including rehabilitation, deterrence (discouraging someone from doing something), incapacitation (preventing someone from doing something) and retribution (punishment for wrong doing).

Custodial sentences are usually reserved for serious crimes where a convict could pose a threat to the public or the legal system wants to hand down a harsh punishment. While in custody, the convict does not have liberty to move and associate freely. She is held in a facility appropriate to her needs, with other prisoners, until she has served out the sentence. For people with custodial sentences, it is common to reevaluate the sentence and allow the prisoner out on parole if he has behaved well during his time in prison. This allows people to rejoin the outside world, as long as they meet some requirements.

Most custodial sentences place people in the custody of a jail, prison, or juvenile detention center, depending on the age of the offender and the crime. In some cases, prisoners may be sent to hospitals, psychiatric clinics, or drug rehabilitation facilities. Depending on the case, the prisoner could return to a conventional incarceration facility after she is stable. Patients in mental institutions usually serve out their sentences there, and their parole hearings are subject to careful review to determine if release is a safe option.

Prisoner rights for people serving custodial sentences vary by nation. Usually prisoners must receive adequate food, clothing, and bedding. They also need access to medical care. Some nations mandate access to an attorney for anyone serving a custodial sentence and may have additional health and safety requirements like access to exercise facilities and fresh air. Some facilities offer libraries and educational opportunities including classes, often with rehabilitative goals in mind to provide prisoners with skills they can use when they get out.

The length of a custodial sentence may be at the discretion of a judge or set out in sentencing guidelines. Some regions have mandatory sentencing laws, and judges must impose these penalties in the event of a conviction. Others allow more leeway, allowing a judge to consider issues like mitigating circumstances when he issues a custodial sentence. In the event of an exoneration, the prisoner will be immediately released, and may be entitled to damages if she chooses to pursue the matter in court.

If you have engaged in protecting an alleged criminal or assisted in hiding the evidence of his crime, you could soon find yourself facing legal charges of your own. The fact that you played no active role in the crime’s commission does not absolve you of guilt.

Anything that one might do to help a criminal suspect after the fact will normally constitute the behavior of an accessory. This includes such actions as:

• Offering a place to hide.

• Helping to destroy the evidence.

• Providing a means of escape.

The moment at which a person actually becomes involved in a crime will determine whether he acted as an accessory or aided and abetted in its commission. The difference between acting as an accessory or aiding and abetting always comes down to timing, and the moment at which a murder victim breathes his last breath can serve as a clear determinant. If you help a killer move a dead body, you become an accessory, but if you assist in cleaning the room while the victim is still alive, you will face charges of having aided and abetted in the murder.

The law also distinguishes between accessories to a crime and those who have conspired to commit one. While conspirators make a pact or agreement to engage in an illegal activity, an accessory to that operation gets involved only after it has already taken place. Although an accessory might enlist the help of others in his efforts, this would not constitute conspiracy under Ukrainian law.

Regardless of any attempts they might make to help, members of a suspect’s immediate family cannot be charged as accessories. Those in this position include the alleged perpetrator’s:

• Husband

• Wife

• Mother or father

• Brother or sister

• Child or grandchild

Nevertheless, the same exemption does not apply to close friends or to any other member of the suspect’s family circle. Common defenses for accessory to a crime include having been:

• Unaware that a crime occurred.

• Under duress and in fear of imminent reprisal.

• Falsely accused.

• Mistakenly identified.

• Just an innocent bystander.

There are five possible purposes to the punishment of criminals:

1. Incapacitation: A felon in prison cannot commit crimes while imprisoned. An executed felon cannot commit a crime ever again.

2. Deterrence: The threat of punishment deters people from engaging in illegal acts.

3. Restitution: The felon is required to take some action to at least partially return the victim to the status quo ante.

4. Retribution: The felon harmed society; therefore society (or the direct victims) is entitled to inflict harm in return.

5. Rehabilitation: The punishment changes the felon in order to make him a better citizen afterwards. (The punishment can include mandatory vocational training, counseling, drug treatment, etc.)

In order for a punishment to be justified, it must satisfy at least one of these criteria. Capital punishment clearly satisfies incapacitation. But so does life imprisonment without parole. Granted, there is a tiny, non-zero probability that the felon may escape and kill again (or kill a guard or another inmate). The evidence raises serious questions about whether capital punishment deters more than life imprisonment. Violent criminals tend to have anger-control issues or be risk-seeking, harboring a belief that they won't be caught.

In order to justify capital punishment, we have to accept that retribution is a legitimate objective of the criminal justice system. Retribution is used to justify "an eye for an eye." Retribution is based more on emotion than on rational policymaking. In endorsing capital punishment based on retribution, one is really saying that the marginal gain in retribution value from execution compared to life without parole is what justifies the policy. There is still a whole lot of retribution embodied in life without parole.

If a criminal is falsely convicted, life without parole allows that the falsely convicted may at some future point be freed. Years of imprisonment are wrongly imposed on the falsely convicted person, but this harm is less than the harm incurred by erroneously killing him.

Lawyers argue that, given the risk of false conviction, we should not accept capital punishment on the possibility that it may deter crime. We should want incontrovertible evidence that it deters before accepting that it has satisfied the deterrence criterion.

When a court imposes punishment for a breach of the law it shouldn’t be taken as a vengeance but rather as an endeavour to discourage the person who has broken the law from repeating this act. One purpose is obviously to make the offender to confess for his misdeeds and to assist (him or her) to return to normal life as a useful member of the community. Punishment can also be seen as a deterrent because it cautions other people of what will happen if they are tempted to break the law.

A lot of people believe we should make the punishment "fit for the crime". Those who steal from the others should be deprived of their property. For those who attack others corporal punishment should be used. Murderers should be subject to the principle "an eye for an eye and a tooth for a tooth" and automatically receive the death penalty. On the other hand such views may seem cruel and barbaric. Modern human society should demonstrate a more humane attitude to punishment. We have to try to understand why a wrongdoer commits a crime and how and why society has failed to enable him to live a respectable and law-abiding life.

No society is free from crime and it is to be accepted that “crime is an ever-present condition, even as sickness, disease, and death”. One area which everyone agrees about is crime prevention, especially since it is beneficial to society in general as this leads to a reduction in crime.

As opposed to the commission of crime, methodological crime prevention techniques are not as sensational to merit much attention. Traditionally, societies relied heavily on the criminal justice system as the major solution to this problem, but little importance was given to social solutions such as education. People tend to think of police work as only entailing the investigation and prosecution of criminal offences. However, the police are also bound to prevent crime by being involved in the social fabric of a country through a pro-active educational role. While most people are aware of techniques to prevent burglary, not everyone is cognizant of methods that can reduce the possibility of being a victim of modern high-tech crimes. In this way, the police have a major role to play in teaching people ways to avoid falling prey to cyber-stalkers, for example.

Apart from being law enforcers and teachers, in many instances the police also act as akin to social workers in an attempt to either prevent further crimes or to discourage certain individuals from indulging in criminal behaviour. This social aspect of policing can also contribute to community policing where citizens themselves join forces with the police in protecting their neighbourhood.

The Courts must ensure that citizens do not look at them as purely punitive but rather as contributing towards the overall enhancement of society. Like the police, the Courts too can play an educational role in prevention. This can be done through judgements where, rather than pronouncing legal punishment, they seek to rehabilitate both the convicted person and society in general. By this we mean programmes such as community work where society can benefit through the honest efforts of the offender, who would feel useful in his or her contribution.

Rapidity in criminal proceedings can also indirectly reduce crime. It reduces frustration and exasperation as those charged in Court will have greater respect for justice which serves as a deterrent to re-offending. Tackling the root causes of crime is an important way to go about reducing crime. Crimes can vary in their typology and methods of execution. Notwithstanding these differences, most crimes are the result of certain risk factors, such as poverty, unemployment, lack of meritocracy and unreasonable taxation.

Other less obvious causal factors of crime include low quality tourism and the influence of violence in movies and computer games. Some of these risk factors can be addressed by a number of crime prevention initiatives which may include activities targeting the most vulnerable.

A good educational system coupled with no job prospects leads to nowhere. Hence, social prevention necessitates a support network from the community, school, family and broader social infrastructure. Such a multi-agency approach to crime prevention does not call for a reduction in existing functions of the criminal justice system, but rather seeks to re-engineer the roles of the Courts and the police in tackling crime and delinquent behaviour at its roots.

**LIST OF THEORETICAL QUESTIONS**

1. Explain what is Law and why is it necessary?

2. Explain the difference between civil law and criminal law.

3. Describe the lawmaking process in the legislature.

4. Describe the lawmaking process in Ukraine.

5. Explain the concept of Constitutional law.

6. What is a constitution? Explain the distinction between a written and unwritten constitution.

7. Describe general principles of the constitutional system in Ukraine. Constitution of Ukraine: its structure and significance.

8. Which rights the Constitution of Ukraine guarantees to each person? What does the Constitution of Ukraine oblige every person?

9. What are human rights? Who has human rights? Why "should" anyone respect them?

10. How do human Rights Become Law?

11. Describe the first human rights declaration adopted by the United Nations. Why is it important?

12. Analyze the protection of human rights by the Constitution of Ukraine.

13. Analyze rights, freedoms and duties of foreigners in Ukraine.

14. Describe legal entry and stay foreigners in Ukraine.

15. Describe grounds for acquisition of citizenship of Ukraine.

16. Characterize features of Civil Law in Ukraine.

17. Analyze Property as a category of civil law.

18. Intellectual property: types and characteristics.

19. Describe types of crimes.

20. Describe crimes in the Sphere of IT Technologies.

21. Describe punishment and its types