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DEPENDENCE OF THE LAW-ENFORCEMENT AND LAW-INTERPRETING ACTIVITY UPON THE HUMAN NEEDS AND INTERESTS

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SUMMARY

The article is dedicated to the analysis of impact of human needs and interests upon the law-enforcement and law-interpreting activity, mainly: a) material conditioning of such activity, b) formation of their semantic orientation. The article considers the essence of the notions of the law-enforcement activity and judicial enforcement. Besides, the quantitative indexes are determined of mentioning such notions as the “need” and “interest” in the law-enforcement acts. Thus, according to the sphere of vital activity the most frequently mentioned are the personal (20 cases) and political (20 cases) needs and interests. according to the subject-bearer; the needs and interests classified as individually-collective are the most widely used (19 cases).

Key words: law-enforcement activity, law-enforcement act, law-interpreting activity, need, interest,

ОБУСЛОВЛЕННОСТЬ ЧЕЛОВЕЧЕСКИМИ ПОТРЕБНОСТЯМИ И ИНТЕРЕСАМИ ПРАВОПРИМЕНИТЕЛЬНОЙ И ПРАВОТОЛКОВАТЕЛЬНОЙ ДЕЯТЕЛЬНОСТИ

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АННОТАЦИЯ

Статья посвящена анализу форм влияния потребностей человека и интересов на правоприменительную и правотолковательную деятельности, а именно: а) материальное причинение такой деятельности, б) формирование их содержательной направленности. Рассмотрена суть понятий правоприменительной деятельности и судебного правоприменения. Кроме того, определены количественные показатели упоминания в правоприменительных актах понятий «потребность» и «интерес». Так, за сферой жизнедеятельности наиболее часто упоминаются личные (20 случаев) и политические (20 случаев) потребности и интересы; за субъектом-носителем наиболее распространёнными являются потребности и интересы индивидуально-коллективные (19 случаев).

Ключевые слова: правоприменительная деятельность, правоприменительный акт, правотолковательная деятельность, потребность, интерес.

Problem setting and topicality of the research topic. The component of any law-enforcement activity is the interpretation (clarification and explanation) of the content of the legal norm enforced by the law-enforcement authority. Besides, quite important, and sometimes even decisive role in this activity belongs to the consideration of the possible impact of the law-enforcement act upon the status of satisfaction of certain needs and interests of the direct law-enforcement addressee (and some other subjects). Thus, it seems reasonable to assume that the more accurately and frequently the needs (interests) of the law-enforcement addressee are reflected (and specified), the more possible will be the impact of such activity on them.

The article object and objective is to demonstrate the form of impact of the human needs and interests upon

the law-enforcement and law-interpreting activity.

Presentation of the basic material. Having analyzed the definitions of the notion of the law-enforcement widespread in the legal science, we formulated its definition as follows: law-enforcement activity is the government-regulating activity of the authorized subjects which is constituted by the making of personified decision as to certain persons which is aimed at the satisfaction of human needs and interests and in the determination of mutual rights and obligations of such subjects which will realize the corresponding legal norm.

Thus, we focus on the need-oriented law-enforcement activity.

Thus, we believe that certain practical importance is acquired by the determination of the frequency of mentioning of different human needs and interests

in the law-enforcement acts. Since any law-enforcement activity is aimed at the satisfaction of certain human needs and interests of these or those subjects of the society.

In this case special attention should be paid to the judicial enforcement which is one of the types of the law-enforcement activity.

For this purpose we conducted the corresponding research based on the materials of the law-enforcement activity of a number of the senior judicial authorities of Ukraine.

Like in the previous case it was conducted using the quantitative analysis. It allows defining how frequently the law-enforcement authorities justify their decisions referring to these or those human needs and interests. And such “references” in their turn may testify to the need-orientation of the law-enforcement decisions.



Empiric basis for the research was as follows: 1) decisions of the Supreme Court of Ukraine (2015-2017), 2) decision of the Constitutional Court of Ukraine (2015-2017). This is conditioned by the fact that the former being the superior authority in the judicial system of Ukraine and the second one as the only authority of the constitutional jurisdiction solve the most complex and the most topical issues of the legal practice. First of all, the general amount of using the notions “need” and “interest” was determined in all studied acts of the mentioned authorities. After this the indexes of their usage were classified according to the types

using the following two criteria: 1) the sphere of life of the subjects (personal, economic, political, in the sphere of the social protection, cultural and spiritual needs and interests), 2) the subject as the bearer of the needs and interests (individual, collective, individually-collective). Finally, these criteria were used to calculate the general amount of indexes of using the notions “need” and “interest” in all studied law-enforcement acts.

The results of the research are reflected in the tables 1 and 2.

We believe that one important issue needs the clarification: what should the interpreter do when he faces

the collision of interpretations? When the norm has two senses? Can the choice be made between them with the total negligence of the problematics of needs and axiology?

The statement that the rules (“canons”) of interpretation lead to the only correct answer, in fact is absolutely [quite] problematic. Below the short list of the mutually exclusive interpretation rules is provided (tables 3) [1, p. 37–38].

Conclusions. Thus:

1. The following conclusions can be drawn from the tables provided:

– according to the sphere of vital activity the most frequently mentioned

Table 1

The quantitative indexes of the needs (indexes) in the law-enforcement acts according to the sphere of life of the subjects

	Decisions of the SCU			Decision of the CCU		
	2015	2016	2017	2015	2016	2017
Personal needs (needs)	6 instances (23.12.2015 No. 6-327 uc15, 16.12.2015 No. 6-2510 uc15, 18.11.2015 No .6-187 uc15, 04.11.2015 No. 6-734 uc15)	4 instances (20.01.2016 No. 6-2808 uc15, 03.02.2016 No. 6-885 uc15, 10.02.2016 No. 6-2250 uc 15, 02.03.2016 No. 6-308 uc15)	6 instances (19.04.2017 No. 6-3057 uc16, 29.03.2017 No. 6-3104 uc16, 13.03.2017 No. 6-147 uc17)		4 instances (01.06.2016 No. 2-pp/2016 (c. 22), 08.06.2016 No. 3-pp/2016 (c. 21), 08.09.2016 No. 6-pp/2016 (c. 22)	
Economic needs (interests)	1 instance (07.10.15 No. 6-573)	4 instances (13.01.2016 No. 6-3019 uc15, 17.02.2016 No. 6-1171 uc15, 24.03.2016 No. 6-1009 uc15, 06.04.2016 No. 6-312 uc16)	2 instances (12.04.2017 No. 6-487, 05.04.2017 No. 6-399 uc17)		1 instance (08.06.2016 No. 4-pp/2016 (c. 22)	
Political needs (interests)	6 instances (23.12.2015 No. 6-377 uc15, 09.12.15 No. 6-1426 uc15, 02.12.2015 No. 6-1707 uc15, 25.11.2015 No. 6-913 uc15, 11.11.2015 No. 6-2187 uc15, 21.10.2015 No. 6-106 uc15)	3 instances (27.01.2016 No. 6-477 uc15, 16.03.2016 No. 6-30 uc15, 30.03.2016 No. 6-107 uc16)	7 instances (24.04.2017 No. 6-2885 uc15, 22.03.2017 No. 6-2967 uc16, 01.03.2017 No. 6-3139 uc16, 22.02.2017 No. 6-17 uc17, 01.02.2017 No. 6-2360 uc16, 16.01.2017 No. 6-2552 uc16)		4 instances (01.06.2016 No. 2-pp/2016 (c.3), 08.06.2018 No. 4-pp/2016 (п.22), 01.07.2016 No. 5-pp/2016 (c. 22), 08.09.2016 No. 6-pp/2016 (c. 22)	
The needs (interests) in the sphere of the social protection						
Cultural and spiritual needs (interests)						

Thus, the most frequently mentioned are the personal (20 instances) and political (20 instances) needs and interests. This is conditioned by the fact that they are the ones most frequently unsatisfied or not completely satisfied. The personal needs and interests reflect the person's individuality (traits of character, thoughts, consciousness, behavior), its autonomy. And quite frequently the other people make impact or pressure on the consciousness of an individual, besides, the thoughts and views of the people can be discriminated due to certain circumstances. Political needs and interests reflect the possibility of the state and local government in the determination and enforcement of their politics, and, thus, they also can be frequently discriminated;



Table 2

The qualitative indexes of the needs (interests) in the law-enforcement acts according to the subject-bearer

	Decisions of the SCU			Decision of the CCU		
	2015	2016	2017	22015	2016	22017
Collective needs (interests)	3 instances (23.12.2015 No. 6-377uc15, 16.12.2015 No. 6-2510 uc 15, 09.12.15 No. 6-1426uc15)	2 instances (27.01.2016 No. 6-477uc15, 17.02.2016 No. 6-1171uc15)	5 instances (12.04.2017 No. 6-487, 19.04.2017 No. 6-3057uc16, 05.04.2017 No. 6-399uc17, 29.03.2017 No. 6-3104uc16, 13.03.2017 No. 6-147uc17)		3 instances (08.06.2016 No. 4-pn/2016 (c.22), 01.07.2016 No. 5-pn/2016 (c.22), 08.09.2016 No. 6-pn/2016 (c. 22))	
Individual needs (interests)	3 instances (02.12.2015 No. 6-1707uc15, 25.11.2015 No. 6-913uc15, 18.11.2015 No. 6-187 uc15)	5 instances (13.01.2016 No. 6-3019uc15, 10.02.2016 No. 6-2250uc 15, 02.03.2016 No. 6-308uc15, 30.03.2016 No. 6-107uc16, 06.04.2016 No. 6-312uc16)	5 instances (24.04.2017 No. 6-2885uc15, 29.03.2017 No. 6-3104uc16, 22.02.2017 No. 6-17uc17, 01.03.2017 No. 6-3139uc16, 16.01.2017 No. 6-2552uc16)		3 instances (01.06.2016 No. 2-pn/2016 (c. 22), 08.09.2016 No. 6-pn/2016 (c. 22))	
Collectively-individual needs (interests)	7 instances (23.12.2015 No. 6-327 uc15, 16.12.2015 No.6-2510 uc 15, 11.11.2015 No. 6-2187uc15, 04.11.2015 No. 6-734uc 15, 21.10.2015 No. 6-106uc15, 07.10.15 No.6-573)	4 instances (20.01.2016 No. 6-2808 uc15, 03.02.2016 No. 6-885uc15, 24.03.2016 No. 6-1009uc15, 16.03.2016 No. 6-30uc15)	5 instances (22.03.2017 No. 6-2967uc16, 13.03.2017 No. 6-147uc17, 01.02.2017 No. 6-2360uc16, 16.01.2017 No. 6-2552uc16)		3 instances (01.03.2017 No.6-3139uc16, 08.06.2016 No. 3-pn/2016 (c.21), 08.06.2016 No.4-pn/2016 (c. 22))	

Thus, the needs and interests classified as individually-collective are the most widely used (19 instances). This can be explained by the fact that they as compared to exclusively collective and individual are always connected with the specific situation which is usually the subject of regulating the law-enforcement judicial decisions.

Table 3

Rule	Opposite rule
The grammar and punctuation should be understood in their ordinary meaning	The courts are not bound by the grammar rules if they see the mistake or ambiguity in the provision of law
Ordinary words shall be given the ordinary meaning, and the technical words should be given the technical meaning	If the context or the other factors testify to the opposite intention of the legislator, the simple words may have the technical meaning and vice versa
Separate words cannot be missed out of the interpretation, as if they do not bear any semantic loading	The words in the contract which absolutely do not correspond to its meaning should be avoided.
The interpretation under which the law remains acting, should be dominating over the one in which the law becomes void	The interpretation under which the law remains acting, should be dominating over the one in which the law becomes void, only if it does not contradict to the intention of the contracting parties

are the personal (20 instances) and political (20 instances) needs and interests. This is conditioned by the fact that they are most frequently not satisfied or only partially satisfied. The personal needs and interests reflect the person's individuality (traits of character, thoughts, consciousness, behavior), its autonomy. And quite frequently the other people make impact or pressure on the consciousness

of an individual, besides, the thoughts and views of the people can be discriminated due to certain circumstances. Political needs and interests reflect the possibility of the state and local government in the determination and enforcement of their politics, and, thus, they also can be frequently discriminated;
 – according to the subject-bearer, the needs and interests classified

as individually-collective are the most widely used (19 instances). This can be explained by the fact that they as compared to exclusively collective and individual ones are always connected with the specific situation, which is usually the subject of regulating the law-enforcement judicial decisions.
 2. In case of the interpretation (semantic) collision the court will settle the case



based on the analysis of the needs which will be satisfied by the first and the second interpretation. If the first interpretation has the useful social effect, and the second does not, the choice would be easy. But if the court shall determine the proportion in the satisfaction of needs with the first and second interpretation, its decision should be made in favor of more substantial one.

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ВОПЛОЩЕНИЕ СПЕЦИАЛЬНЫХ ПРИНЦИПОВ УГОЛОВНОГО ПРАВА В МЕЖДУНАРОДНО-ПРАВОВЫХ АКТАХ

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АННОТАЦИЯ

В статье автор исследует специальные принципы уголовного права, которые нашли свое воплощение в международно-правовых документах, среди которых: принцип *ne bis in idem* («недопустимость привлечения к уголовной ответственности дважды за одно и то же преступление»); принцип личной (индивидуальной) уголовной ответственности; принцип *nullum crimen sine lege*; принцип *nullum poenasine lege*; принцип недопустимости ссылки на официальное или должностное положение лица; принцип неотвратимости ответственности; принцип справедливости рассмотрения уголовного дела в суде; принцип гуманного обращения с человеком (принцип гуманизма) принцип виновной ответственности. Все названные принципы имеют важное значение для реализации уголовной ответственности, вынесения справедливого приговора по результатам рассмотрения уголовного производства в суде, а также для утверждения и реализации одного из самых важных общеправовых принципов – принципа справедливости.

Ключевые слова: специальные принципы международного уголовного права, принцип личной ответственности, принцип неотвратимости ответственности.

IMPLEMENTATION OF SPECIAL PRINCIPLES OF CRIMINAL LAW IN INTERNATIONAL LEGAL ACTS

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SUMMARY

In the article, the author explores the special principles of criminal law, which are embodied in international legal documents, among which are: the principle of *ne bis in idem* ("the inadmissibility of criminal prosecution twice for the same crime"); the principle of personal (individual) criminal liability; principle of *nullum crimen sine lege*; principle of *nullum poena sine lege*; principle of inadmissibility of a reference to an official or official position of a person; principle of inevitability of responsibility; principle of fairness in a criminal case; the principle of humane treatment of a person (the principle of humanism) the principle of guilty responsibility. All of these principles are important for the implementation of criminal liability, the adoption of a fair sentence based on the results of criminal proceedings in court, as well as for the adoption and implementation of one of the most important general legal principles – the principle of justice.

Key words: special principles of international criminal law, principle of personal responsibility, principle of inevitability of responsibility.

Постановка проблемы. Принципы международного права и международного уголовного права ничем по своей сути не отличаются от принципов любой отрасли национального права. Их содержание так же может закрепляться в международных нормативно-правовых документах, приобретая характер норм-принципов, а может специально в них и не формулировать-

ся. В случае оформления последних в виде международно-правовых норм, принципы приобретают значение источника права, а если такого преобразования не произошло, то роль их будет проявляться иначе. Они будут выполнять идеологическую, политическую, регулятивную, стабилизирующую, системообразующую функции. Выполняя эти функции, принципы