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АДАПТАЦІЯ ТРАСТУ ДО РОМАНО-ГЕРМАНСЬКОЇ ПРАВОВОЇ СИСТЕМИ

Анотація
У статті досліджено поняття трасту за законодавством деяких європейських країн. Зокрема, досліджено правове регулювання трасту у Франції та Німеччині. Проаналізовано поняття трасту за Модельними правилами європейського приватного права. Проаналізовані відмінності в підходах до трасту в англо-американському і романо-германському праві. Виявлено особливості континентальної моделі довірчої власності.
Ключові слова: довірча власність, довірче управління, траст, європейське приватне право, англо-американське право, романо-германське право.

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Аннотация
В статье исследовано понятие траста по законодательству некоторых европейских стран. В частности, исследовано правовое регулирование траста во Франции и Германии. Проанализировано понятие траста по Модельным правилам европейского частного права. Проанализированы различия в подходах к трасту в англо-американском и романо-германском праве. Выявлены особенности континентальной модели доверенной собственности.
Ключевые слова: доверительная собственность, доверительное управление, траст, европейское частное право, англо-американское право, романо-германское право.

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THE CONCEPT AND FEATURES OF LEGAL SYSTEM OF CANON LAW

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The article is devoted to the problem of definition of the status of canon law in the categories of modern jurisprudence. Canon law is defined as the independent individual legal system. The study of the structure of the canonical legal system in the context of legal comparativistics allows marking the presence of all necessary features of the legal system. The results of the study of the subject and methods of canonical and legal regulation underscore the characteristics of canon law and are additional confirmation of the given thesis.
Keywords: canon law, legal system, canonical and legal life, canonical and legal regulation, method of akribeia, method of economy.

Problem statement. The number of references to canon law has increased in modern legal literature. In particular, they refer to highlighting historic aspects of its existence, the study of models of relations between church and state, comparative analysis of canon law and other religious legal systems, etc. However, one may notice that most of these references have a significant drawback: they only use the secular methodology, whereby their research becomes one-sided and does not get to the essence of canon law. It seems that one of the issues that require primary attention in this regard is the status of canon law.

Analysis of recent studies and publications. Over the past twenty years, since the collapse of communist ideology, canon law has become the object of scientific research for scholars and historians, as well as for lawyers. In particular, a number of scientific works are worth attention, including works by I. A. Balzhik, D. D. Borovoy, M. Yu. Varyas, A. A. Dorskaya, S. V. Misevich, I. O. Pristinskiy, G. I. Trofanchuk, S. B. Tsebenko, V. A. Tsypin, S. O. Shalyapin and others.

Allocation of unresolved parts of the general problem. Modern studies of canon law refer to the questions of its historic development, the sources, the bodies of church authority (particularly in judicial system), etc. However, they practically do not refer to the problem of the status of canon law (except for S. O. Shalyapin, who described confessional legal systems), putting everything to reflection on the place of canon (church) law in the national legal system. This raises the need to use methodological tools and the framework of categories and concepts of contemporary jurisprudence to address the question about the essence of canon law.

The purpose of the article lies in clarifying the status of canon law and defying that canon law is the individual legal system.

Presentation of the main research material. Two decades ago, after the collapse of ideas of socialism in Eastern Europe, legal systems of Ukraine and Russia embarked on the course of ideologization and addressing to their tradition. This was primarily reflected at the doctrinal level, in the works based on the studies of lawyers and philosophers of the XIX – early XX century. At the same time, this revived the interest to canon (church) law, the study of which was stopped after the publication of Decree of the Council of People's Commissars on freedom of conscience, church, and religious societies, establishing the separation of church and state in February 1918 [1].

Despite the terms of canon and church law are close to each other, they are not identical: the etymology of the first term emphasizes that it arises from internal church rules – canons, adopted by the Ecumenical Councils. Whereas, the use of the term "church law" also requires taking into account the regulations of the state of origin, which externally regulate the activities of the church. In addition, canon law is based on the Code of Canon Law, which is common to the whole Orthodox Church, while church law suggests some regional orientation (church law of the Russian Orthodox Church, church law of the Ecumenical Patriarchate of Constantinople, church law of the Greek Orthodox Church, etc.).

The refusal from national cultural and historic traditions, as well as from spiritual foundation in all spheres of existence of socialist society led not only to the secularization of law but to the desacralization – the loss of quality and status "of the holiest thing that God has on earth" [2, p. 270]. In such circumstances, the law becomes not the guide of divine will and not the art of goodness and equity (ars boni et aequi), but only turns into the law by the will of the ruling class [3, p. 443], based on personal benefit. Legal apostasy was also the result of systematic activities of party and state structures aimed at the elimination of "religious remnants", among which a special place is given to the church culture and science, in particular – to canon (church) law.

Despite the lack of doubt, that canon law is a special normative system, the range of views on its nature is very wide. In general, one can distinguish the following approaches: 1) canon law is the part of national law (branch, legal community); 2) canon law cannot be called law in the real sense of the word, as it comes from the state and is not provided by its powers; 3) canon law is a corporate legal system that acts regarding persons, who attribute themselves to the Christian community (church corporations). Each of these approaches has its reason.

The positivistic orientation of the first approach is obvious since it releases church law from the will of the state. Speaking of religious law, O. F. Skakun defines it as "the set of national legal systems with common features – unified patterns and tendencies of development on the basis of religious text as primary source of law, which is a close interweaving of religious, legal, moral, and mythical precepts, formed naturally and recognized by the state" [4, p. 299]. While in her academic course O. F. Skakun describes only Islamic, Hindu and Jewish law, it is obvious that all of the mentioned signs of religious legal systems should be also applied to canon law. However, we believe that this approach is only applicable in cases when religious legal system is integrated with secular law, in particular, when it comes to states, in which Christianity has the status of official religion or enjoys special privileges (Greece, Italy, Norway, Germany, etc.), and ecclesiastical courts are included in the judicial system of the state. This would be true with respect to canon law of pre-Soviet period. For example, A. A. Dorskaya in her doctoral thesis proves that church law of the Russian Empire can be defined as "the branch of law representing the set of legal norms, which define the status of churches, as well as the rights and responsibilities of clergymen, the subjects (citizens) depending on the attitude to them" [5, p. 14]. However, this is not right for those cases when the church is separated from the state and the implementation of its canons is not provided by state powers.

The second approach is described by the ideologists of the cleansing of law from religious "raid", the supporters of atheistic outlook and the representatives of legal positivism, who refuse to recognize any norms not generated by the state or not provided by its powers, as laws. In the article of P. S. Gratsianov in the Great Soviet Encyclopedia, church law is presented as the set of approved or established by state rules that regulate the internal organization of church and the relationship between churches, religious believers, and state. It is noted that countries, where church is separated from state, do not have church law, and the rules of internal relations in church do not have legal character [6].

The first and the second approaches have one common feature – positivistic orientation, which has two scenarios: either canon law is connected to state – and then it is the part of its legal system, or it is not connected – and then it is not law at all.

The third approach, is supported, in particular, by M. Yu. Varyas, is based on the fact that church is the corporation of a special type, and its norms are not only of religious, but also of legal value, having corporate general obligation, formal certainty, normativity, regulativity and other properties that are also typical of positive law [7, p. 82]. This approach seems to be the most productive because it allows us to go beyond positivistic dogmas and to look at the phenomenon of canon law in isolation from the phenomenon of state. The latter is consistent with the ideas of sociological school of law and anthropological approach that allow to deduce the origin of law from social relations (in this case – internal relations in church) and human nature.

Analysis of all three approaches allows us to conclude the following: the first and the second approaches are one-sided, the third one is much more flexible – it defines canon law as an independent phenomenon generated by church and not by state powers. However, canon law can either be the part of national legal system (as its subsystem,

special legal community, superbranch), or have the partial recognition by state (for example, the use of canons in marriage and family, hereditary and other relations), or exist without any state support and recognition (church, however, should consider in its activity the norms of secular law).

This means that canon law is a specific legal system, which has all the necessary features of legal system. For more detailed research, we should refer to comparative studies.

Category "legal system" has many definitions in modern jurisprudence, among which the following can be distinguished:

– structurally coherent, historically formed set of legal norms, formalized in specific sources, legislative system, legal traditions and concepts, and associated with them types of legal understanding, as well as legal ideology, legal consciousness, legal culture and legal practice, which differ in degree of representation, correlation and predominance of legal elements in a particular integral formation [8, p. 35] (H. Bekhruz);

– formalized complex of normative, organizational, monitoring and ideological components of law that exist at national, regional and international levels (Yu. N. Oborotov) [9, p. 154];

– objective, historically natural legal phenomenon, which includes interrelated, interdependent and interacting components: law and legislation that implements it, legal institutions and legal practice, rights and responsibilities, legal relationship, legal ideology, etc. (N. M. Onishchenko) [10, p. 27];

– formed under the influence of certain patterns of development of society, set of all legal phenomena, which are in sustainable relations between themselves and with other social phenomena [11, p. 26] (S. P. Pogrebnyak).

State is not mentioned in any of these definitions, contained in the works of well-known Ukrainian theorists. We are referring to "organizational components", "legal institutions", "society", but it would be wrong to come to conclusions that organizational components or legal institutions have exclusive features of state authority. Moreover, asserting that law is only originated from state and is its tool would mean to support normativism and refuse to acknowledge the possibility of the non-state lawmaking.

In general, if we put aside the idea of the mandatory origin of law from the state, then any religious normative system with developed infrastructure may qualify for recognition the status of the legal system. In some cases, this religious legal system merges with the legal system of the state, as it was in the Byzantine Empire; in some cases – it exists under the patronage of the state, influencing its law. In most modern Western countries religious law coexists with secular law, without any patronage of the state or being incommoded by this.

In order to be certain that religious law is, in fact, a specific legal system, it is necessary to examine how much it conforms to the structure of the legal system developed by comparativists.

The structure of the legal system, according to the definition by O. F. Skakun, is a sustainable unity of elements of the legal system and their legal relations that ensures its legal integrity [4, p. 47]. Substantive part of the legal system, according to the Ukrainian scholar, includes the following elements (subsystems): 1) institutional – subjects of law; 2) normative (regulatory) – legal norms and principles objectified in certain legal forms; 3) ideological (doctrinal) – law understanding, legal thinking, legal ideas and concepts, legal consciousness, legal culture; 4) functional (sociological, practical) – law realization, law enforcement, legal relations, good behaviour, legal practice; 5) communicative (integral) – internal relations between the elements of the legal system, relations with other systems of society, relations with international and regional legal systems. The core value of the legal system is people [4, p. 47-49]. The same five elements are named by N. N. Onishchenko in the collective monograph "Modern legal systems. Globalization. Democracy. Development" [10, p. 57]. According to S. P. Pogrebnyak and D. V. Lukyanov, legal system consists of five components: 1) subjective; 2) normative; 3) ideological; 4) functional; 5) effective [11, p. 28]. Further enumeration of scientific views on the structure of the legal system seems to be superfluous, since it will not add much to what was said, and therefore we should proceed to the examination for compliance of the elements of canon law with the theoretical structure of the legal system.

The **institutional** element of canon law primarily includes subjects of canon law, i.e. people with canonical legal personality [12] – clergymen, laity, and monks. It also includes the Church as "established by God human society, united by Orthodoxy, Law of God, hierarchy and the Sacraments" [13, p. 49].

The **normative element** of the canonical legal system includes biblical com-mandments and rules, canons, regulations of local churches, church customs, precedents of ecclesiastical courts, and other regulatory precepts, which are recognized, approved, and provided by the Church. This may also include secular legislation, which governs issues regarding freedom of conscience and legal status of religious organizations.

The **ideological** element is based on the attitude to canon law as the divinely instituted set of rules of conduct, its perception as earth incarnation of divine justice. Canonical and legal thinking is based on ideas of kindness, love, justice, unity, mercy, and service. Canonical and legal consciousness has certain characteristics: legal ideology implies not only knowledge of religious precepts and understanding of their meaning but also faith-based belief in their justice and divine origin. Legal psychology, including emotions and experiences, is also based on Christianity, which calls for coping with passions, in particular, pride, anger, temper, usury. Legal culture of the church community, which reflects the quality level of its canonical and legal life, is based on basic principles and ideas of Christianity contained in the texts of the Gospel and the Epistles, the Holy Tradition, the writings of the Church Fathers and famous theologians and canonists.

The **functional** element is concerned with legal communication in canonical and legal field. This includes implementation of canonical precepts in forms of realization (independent implementation

by any subject of law) and application (implementation by specially authorised authorities with church authority – presbyter, bishop, abbot of the synod, patriarch, etc.). The norms of canon law can only be applied by specially authorised authorities. For example, at least two or three bishops can chirotonize (ordain) a bishop (Apost., 1). Regulations on the Ecclesiastical Court of the Russian Orthodox Church dated June 26, 2008, established a system of ecclesiastical courts and their jurisdiction [14].

Canonical and legal relations have a standard structure – subjects, object and content, but the first two elements have certain characteristics arising from the nature of canon law and the subject of canonical and legal regulation. For example, such relations can be viewed in relations between the ruling bishop and the priest regarding the imposition on the latter of canonical prohibition in connection with commission of a canonical offence; relations between the spouses regarding dissolution of religious marriage, etc.

Good behaviour in canon law, as well as in secular law, can be due to several motives: sincere respect to canonical precepts; habitual observance, execution or exercise; implementation of the rule in momentary solidarity with other subjects (conformism); fear of secular or divine punishment or expectation to benefit from implementation of precepts. It should be noted, that the term "fear of God", which is used in religious sphere, does not have to be viewed as a sign of marginality of a God-fearing man: on the contrary, the fear of the Lord is "the beginning of wisdom" (Psalm 110: 10), "true wisdom" (Job 28: 28), "one of the greatest Christian virtues, which lies in the fear of punishment for sins, combined with filial love for God and aspiration for godliness, purity and holiness" [15, p. 828]. Canonical practice is formed not by state authorities, but by ecclesiastical courts and ecclesiastical authorities (parish, diocesan and church-wide).

The **communicative** (integral) element of the canonical legal system includes not only internal relations between all four elements mentioned above, but also relations: 1) with other Christian, but not Orthodox, communities (Catholics, Protestants, non-Chalcedonian churches) and representatives of other religions; 2) with the state and international governmental and non-governmental organizations. The number of modern documents of the Russian Orthodox Church defines the principles and features of relations between the Church and these subjects. Thus, the attitude to non-Orthodox confessions was stated in the Basic Principles of the Attitude to Heterodoxy of the Russian Orthodox Church adopted at the Bishops' Council in 2000 [16]. The principles of relations between the church and the state were formulated in Section III of the Basis of the Social Concept of the Russian Orthodox Church adopted by the same Council in 2000. [17] This document also describes the position of the Church regarding international relations, problems of globalization and secularism (Section XVI) based upon the Holy Scripture and the Holy Tradition. The relations of the Church with the state and society does not allow to ignore human rights activities of the Church, the foundations of which were stated in Section V of the Principles of the Russian Orthodox Church on Dignity, Freedom and Human Rights adopted on 26 June, 2008. [18]

It is obvious that even a fleeting glance at canon law reveals that its structure is consistent with the structure of the legal system. However, we should pay attention to another important point: the normative component of the canonical legal system (in fact – canon law) should have a special object and specific methods of canonical and legal regulation.

The object of canon law is quite complicated and includes: 1) relations arising in the church sphere regarding church government and church administration (administrative division of the church; church hierarchy; election and ordination to the bishop and priest service, administration of the local church, diocese, parish; ecclesiastical courts); 2) relations between the members of the Church (clergymen, monks, laity); 3) relations with other Christian churches and religious organizations; 4) relations between the Church and secular subjects (government, legal entities, natural persons) [7, p. 83-84].

Special attention should be paid to methods of canonical and legal regulation. Many works mention mainly mandatory nature of canon law, which is caused by predominance in any legal system of religious type of two main ways of influence – prohibition and precept. It is sufficient to analyze at least the Decalogue in order to mark the presence of three precepts ("I am the Lord thy God; thou shalt have no other gods before me", "remember the sabbath day", "honour thy father and thy mother") and seven prohibitions ("thou shalt not make unto thee any graven image", "thou shalt not take the name of the Lord thy God in vain", "thou shalt not kill", "thou shalt not commit adultery", "thou shalt not steal", "thou shalt not bear false witness against thy neighbor", "thou shalt not covet thy neighbour's house, thou shalt not covet thy neighbour's wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor any thing that is thy neighbour's").

However, the New Testament, without revoking the rules of the Old Testa-ment, gives them a new interpretation, somewhere strengthening them, and some-where – softening them. Each of the Ten Commandments is proved by Jesus Christ in full, but the commandment about the sabbath day makes an exception for those who do good: "the sabbath was made for man, and not man for the sabbath" (Mark 2: 27). In other cases, even the thought about transgressing the commandment is considered to be sinful: "Ye have heard that it was said of them of old time: thou shalt not kill; and whosoever shall kill shall be in danger of the judgment. But I say unto you, that whosoever is angry with his brother without a cause shall be in danger of the judgment; and whosoever shall say to his brother: "raca", shall be in danger of the council; but whosoever shall say: "thou fool", shall be in danger of hell fire" (Matthew 5:21, 22). "Ye have heard that it was said by them of old time: thou shalt not commit adultery. But I say unto you, that whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart" (Matthew 5: 27–29).

At the same time, while these were clearly mandatory precepts, Christianity recognizes only

one major sin – "the blasphemy against the Holy Ghost" (Matthew 12: 31), which will not be forgiven "neither in this world, neither in the world to come", and covers all cases of persistent and conscious rejection of Christian truths and attributing to the Devil actions, in which the divine grace clearly emerges. However, this sin, as well as any other, can be remitted in case of sincere repentance of the sinner.

All this does not allow us to assert the existence of the "right to sin", which would be quite consistent with the logic of modern Western law, but gives us the opportunity to speak about the presence of subjects that apply canon law of broad discretionary powers. In other words, mandatory canonical precepts can be applied fully, partially, or not applied in certain situations at the discretion of an authorized clergyman. This appears from the words spoken by Jesus Christ to His Apostles "whatsoever ye shall bind on earth shall be bound in heaven; and whatsoever ye shall loose on earth shall be loosed in heaven" (Matthew 18: 18).

This discretion is connected with the presence of two specific methods of canonical and legal regulation in canon law: akribeia and oeconomy. Both terms entered the national canonistics in the twentieth century and were borrowed from the Greek sources – the Apostolic Canons, the Canons of the Ecumenical and Local Councils, the Canons of the Holy Fathers, and from the works of the Byzantine canonists.

The Greek word οικονομια (housekeeping) is found in many texts, for example, in the Canon 102 of the Council of Trullo: "οἰκονομοῦντι σοφῶς", which is translated as "wisely manage", i.e. "by greater softness and mild medicines, to resist this sickness and exert himself for the healing of the ulcer". The word ακριβεια (precision) occurs in the same Canon, which refers to the application of the Canon in all its severity against the unrepentant sinner: "to follow the traditional form in the case of those who are not fitted for the highest things". However, the Byzantine chronicler and canonist John Zonaras gives the following commentary on the Canon 102 of the Council of Trullo: "the spiritual physician should pay attention to the location of the sickness... to weaken the penance for poor-spirited, and to strengthen it for a man of spirit; all is done in mercy clean in order to clean the one from filth and not to irritate the ulcer of the other and not to make the wound bigger" [19, p. 612].

Both words οικονομια and ακριβεια frequently occur in the Greek texts and in almost all cases we are talking about the contrast between repentant and unrepentant sinner. Thus, oeconomy and akribeia are mentioned in the Canon 4 of St. Gregory of Nyssa: "For any man who on his own initiative and of his own accord proceeds to confess the sins, the mere fact that he has condescended on account of secret acts to become an accuser of himself as a result of an impulse of his own, is to be considered proof that the cure of the disease has already begun, and since he has shown a sign of improvement, he is entitled to kinder treatment. One, on the other hand, who has been caught in the act of perpetrating the offense, or who has been exposed involuntarily as a result of some suspicion or of some accusation, incurs an intensification of the penalty, when he returns; so that only after he has been purified accurately may he then be admitted to communion of the Sanctified Elements".

Obviously, oeconomy and akribeia, as methods of canonical and legal regulation, have a special nature that cannot be fully disclosed from the standpoint of dogmatic jurisprudence only.

Akribeia has a mandatory beginning, manifested in the need for exact (literal) compliance with canonical precepts and the avoidance of deviations from canonical requirements. The use of akribeia is limited to matters of dogmatic significance; regarding the subjects whose actions qualify as "the blasphemy against the Holy Ghost"; and also in cases when the exact application of canons is appropriate. In this connection, the mentioned above Canon 102 of the Council of Trullo and the commentary given by John Zonaras draw our attention again: on the one hand, severe penance is imposed on an unrepentant and persistent sinner, as explicitly written in the Canon 102; on the other hand, Zonaras states that penance should be strengthened in mercy for a man of spirit, "... in order to clean [him] from filth".

In "Addressing Clergy and Parochial Church Councils of the City of Moscow" dated December 21, 1995, Patriarch of Moscow and All Russia Alexy II talks about ideas of the Byzantine canonist: "The purpose of penance is not to punish, but to correct, return the clean, repentant, and reconciled with conscience sinner to fellowship with God. If nowadays we do not consider the spiritual state of most people and deprive them of the Holy Communion for years, this penance will give the opposite result... it can lead to further cooling of religious feeling in the person and departure from the Church. The excision is efficient and therefore applicable only to deeply religious people... For most people, it is not enough. Another penance would be much more useful for them – going to church more frequently, reading the Holy Scripture, reading prayers in the morning and in the evening, social service to ill, poor and brokenhearted, in expiation of the sins" [Cit.: 20, p. 646].

Oeconomy suggests the possibility of avoiding strict compliance with canonical precepts (usually, softening). However, it is not always possible to clearly distinguish oeconomy from akribeia: in connection with this, the mentioned above commentary by John Zonaras is more appealing, as he requires to increase the penance in mercy for the man of spirit, though the Canon itself does not contain such requirement, on the contrary, it suggests to treat the repentant with "greater softness and mild medicines". While the Canon contains the formalized requirement, its commentary is more meaningful – both the fact of outer repentance and spiritual traits of the repentant are important in this case. Hence, it is possible to conclude: the method of akribeia is used out of motives of oeconomy, in other words, strict application of canonical regulations, as well as its evasion, have the same purposes – the salvation of the human soul, the preservation of unity and conciliarity of the church, the protection of fundamental principles of religion, dogmas.

Careful consideration of the method of oeconomy does not allow us to agree with D. D. Boro-

voy, who compares it with the "method of legal fiction" and the dispositive method [21, p. 94]. If legal fiction is "the recognition by certainly existent of non-existent, or vice versa, by non-existent of existent" [22, p. 43], then the method of oeconomy does not create anything fictitious, but merely gives the possibility of wide discretion for law enforcer. Contrary to the dispositive method, the principle of oeconomy does not imply equality of the parties in canonical and legal relations, but recognizes the unilateral order of its application, as only clergymen have the right of spiritual healing.

Thus, both akribeia and oeconomy are based on the mandatory beginning, as their application is carried out by the church hierarchy, already supposing the inequality of subjects. The specific nature of akribeia and oeconomy reveals in that these methods are used for the purpose of healing of spiritual and emotional damage to the individual and the church, and these goals cannot be achieved solely by legal means, without mercy and compassion. That is, human justice, administered in the Church by successors of the Apostles, should be based on idea of divine justice, which lies in the theanthropic nature of the Church.

Conclusions. Taking the above into account, it should be noted that canon law is consistent with all the features of the legal system. Due to the lack of close ties of this legal system with particular territory and orientation on the "people of the church" – members of the Church, canon law should be recognized as the individual legal system. Thus, canon law can be defined as the individual legal system, which is based on the Christian religious and legal precepts, affects public relations that arise between members of the Church (including relations regarding church government and church administration), the Church and other religious and public organizations, the state, uses highly specific methods of canonical and legal influence. Canonical and legal life, based on the norms of canon law, includes the whole range of legal phenomena required to confirm the idea of independence of the canonical legal system: canonical and legal relations, canonical legal consciousness and legal culture, canonical legal thinking, church institutions with judicial and administrative functions.

References:

1. Dekret o svobode sovesti, tserkovnyih i religioznyih obschestvah ot 20 yanvarya (2 fevralya) 1918 g. // Dekretyi sovetskoy vlasti. T. 1 (25 oktyabrya 1917 g. – 16 marta 1918 g.). – M. : Gospolitizdat, 1957. – S. 371–375.
2. Kant I. K vechnomu miru / Immanuil Kant // Kant I. Sochineniya v shesti tomah. T. 6. – M. : Myisl, 1966. – 743 s.
3. Marks K., Engels F. Manifest Kommunisticheskoy partii / Karl Marks // Marks K., Engels F. Sochineniya. – 2-e izd. – T. 4. – M. : Gospolitizdat, 1955. – S. 419-459.
4. Skakun O. F. Obschee sravnitelnoe pravovedenie: Osnovnyie tipyi (semi) pravovyih sistem mira / O. F. Skakun. – K. : In Yure, 2008. – 464 s.
5. Dorskaya A. A, Tserkovnoe pravo v sisteme prava Rossiyskoy imperii kontsa XVIII – nachala XX vv.: Avtoref. dis. ... d.yu.n.: 12.00.01 / A. A. Dorskaya. – M., 2008. – 40 s.
6. Bolshaya sovetskaya entsiklopediya. T. 28. Frankfurt – Chaga. – M. : Sov. entsiklopediya, 1978. – 616 s.
7. Varyas M. Yu. Tserkovnoe pravo kak korporativnaya pravovaya sistema: opyit teoretiko-pravovogo issledovaniya / M. Yu. Varyas // Izvestiya VUZov. Pravovedenie. – 1995. – № 6. – S. 76-85.
8. Behruz H. Sravnitelnoe pravovedenie: Uchebnik / Hashmatulla Behruz. – O. : Feniks; – M. : TransLit, 2008. – 508 s.
9. Oborotov Yu. N. Traditsii i novatsii v pravovom razvitii : monografiya / Yu. N. Oborotov. – O. : Yurid. l-ra, 2001. – 157 s.
10. Pravovi sistemi suchasnosti. Globalizatsiya. Demokratizm. Rozvitok / V. S. Zhuravskiy, O. V. Zaychuk, O. L. Kopilenko, N. M. Onischenko; za zag. red. V. S. Zhuravskogo. – K. : Yurinkom inter, 2003. – 296 s.
11. Porivnyalne pravoznavstvo: pidruchnik / za zag. red. O. V. Petrishina. – H. : Pravo, 2011. – 272 s.
12. Oborotov I. G. Kanonichna pravosub'Ektnist: sutnist ta elementi // Aktualni problemi politiki : Zbirnik naukovih prats / I. G. Oborotov. – Vip. 38. – Mikolayiv, 2009. – S. 217-226.
13. Filaret, mitr. (Drozdov). Prostrannyiy hristianskiy katehizis pravoslavnoy kafolicheskoy vostochnoy tserkvi / Mitropolit Filaret (Drozdov). – M. : Obraz, 2005. – 127 s.
14. Polozhenie o tserkovnom sude Russkoy Pravoslavnoy Tserkvi (Moskovskom Patriarhate) ot 26 iyunya 2008 g. [Electronic source]. – Access mode: http://www.mospat.ru/ru/documents/church-court
15. Pravoslavie. Slovar-spravochnik. – M. : DARЪ, 2007. – 959 s.
16. Osnovnyie printsipyi otnosheniya k inoslaviyu Russkoy Pravoslavnoy Tserkvi. Prinyatyi na Yubileynom Arhiereyskom Sobore RPTs 13-16 avgusta 2000 g. [Electronic source]. – Access mode: http://www.mospat.ru/ru/documents/attitude-to-the-non-orthodox/
17. Osnovyi sotsialnoy kontseptsii Russkoy Pravoslavnoy Tserkvi. Prinyatyi na Yubileynom Arhiereyskom Sobore RPTs 13-16 avgusta 2000 g. [Electronic source]. – Access mode: http://www.mospat.ru/ru/documents/social-concepts/
18. Osnovyi ucheniya Russkoy Pravoslavnoy Tserkvi o dostoinstve, svobode i pravah cheloveka Prinyatyi na Osvyaschennom Arhiereyskom Sobore RPTs 26 iyunya 2008 g. [Electronic source]. – Access mode: http://www.mospat.ru/ru/documents/dignity-freedom-rights/
19. Pravila Svyatyih Vselenskih' Soborov' s' tolkovaniyami. – M. : Izdatelstvo Moskovskago Obschestva lyubiteley duhovnago prosvescheniya, 1877. – 736 c.
20. Tsyipin V. Kanonicheskoe pravo / prot. Vladislav Tsyipin. – M. : Izd-vo Sretenskogo monastyirya, 2009. – 864 s.
21. Borovoy D. D. Kanonicheskoe (tserkovnoe) pravo kak normativnaya sistema sotsialno-pravovogo regulirovaniya: Dis. ... k.yu.n.: 12.00.01. / D. D. Borovoy. – Stavropol, 2004. – 178 s.
22. Marohin E. Yu. Yuridicheskaya fiktsiya v sovremennom rossiyskom za-konodatelstve: Dis. ... k.yu.n.: 12.00.01 / E. Yu. Marohin. – Stavropol, 2004. – 179 s.

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ПОНЯТТЯ І ОСОБЛИВОСТІ ПРАВОВОЇ СИСТЕМИ КАНОНІЧНОГО ПРАВА

Анотація
Стаття присвячена проблемі визначення статусу канонічного права у категоріях сучасної юриспруденції. Канонічне право визначається як самостійна персональна правова система. Розвідка структури каноніко-правової системи в контексті юридичної компаративістики дозволяє встановити наявність у неї усіх необхідних ознак правової системи. Результати дослідження предмета і методів каноніко-правового регулювання додатково підкреслюють специфіку канонічного права.
Ключові слова: канонічне право, правова система, каноніко-правове життя, каноніко-правове регулювання, метод акривії, метод ікономії.

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ПОНЯТИЕ И ОСОБЕННОСТИ ПРАВОВОЙ СИСТЕМЫ КАНОНИЧЕСКОГО ПРАВА

Аннотация
Статья посвящена проблеме определения статуса канонического права в категориях современной юриспруденции. Каноническое право определяется как самостоятельная персональная правовая система. Изучение структуры канонико-правовой системы в контексте юридической компаративистики позволяет установить наличие у нее всех необходимых признаков правовой системы. Результаты исследования предмета и методов канонико-правового регулирования подчеркивают специфику канонического права и являются дополнительным подтверждением обосновываемого тезиса.
Ключевые слова: каноническое право, правовая система, канонико-правовая жизнь, канонико-правовое регулирование, метод акривии, метод икономии.

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UKRAINIAN CRIMINAL CODE AS A LEGAL NECESSITY AND POSSIBLE WAYS TO IMPROVE ITS EFFICIENCY

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Article deals with the necessity of legislative imposition of criminal prohibition and criminal liability as the only contemporary justified reaction form to some types of deviant behaviour. It is mentioned that Ukrainian Criminal Code could be less voluminal, and by introducing elements of restorative justice and the criminal misdemeanour it could become more efficient. Stability is not a characteristic feature of the Ukrainian Criminal Code because amendments to it are introduced on a highly regular basis and are often chaotic. Ukrainian Criminal Code can be efficient without the necessary portion of dynamism.
Keywords: criminal liability, criminal code, necessity of criminal law, dynamics and stability of criminal law, efficiency of criminal code.

There has never been and probably shall not be a time in human history when the state (or other similar structure) will refrain from using criminalization and penalization in general. This is obvious when we understand criminality as a natural part of human behaviour. As deviant activity will always be a part of human behaviour respective criminal measures will also have to exist. Therefore, society needs to have criminal legislation as a measure to treat criminal acts. Of course, one may ask why should this be specifically criminal legislation, or may it be any other form of social control? Sure, it can be other. However, society did not work out so far any other which is also that strong and understandable to people as the criminal legislation.

It is hardly arguable that one of the primary challenges of any society is to insure people obey laws vital for public security and safety as well. Amidst the multitude of social control methods criminal responsibility stands separately as the harshest one and as *ultima ratio*. Understandably, the criminal legislation envisaging such criminal responsibility should be i) utmost definite and clear in wording; ii) reasonably stable and dynamic;