

## GUEST EDITOR NOTE ON THE UKRAINIAN LAW

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This issue of the *Russian Law Journal* is unusual. The Editorial Board decided for the first time to make a completely special issue, dedicated to the study of the law of a particular foreign jurisdiction, which is Ukraine. If this experience is recognized as successful, it is possible to start a good tradition which is to publish special issues dedicated to the law of individual states.

It is equally important that, unfortunately, the political events of 2014 led to a very obvious reduction in contacts and cooperation between Russian and Ukrainian academics. Rare attempts to create a platform for such contacts have caused a sharp negative reaction from the Ukrainian Ministry of Education. For example, the ministry criticized the initiative of the scientific foundation of the German automobile concern Volkswagen to provide grants for joint Russian–Ukrainian scientific projects. A great amount of applications by Russian–Ukrainian joint groups of scientists, submitted to that contest, clearly indicated that this ideology of blocking academic contacts is not shared by the academic community either in Ukraine or in Russia. However, there are really not enough permanent platforms that would unite Russian and Ukrainian legal scholars. Therefore, I did not have any hesitation when the *RLJ* editor-in-chief Professor Dmitry Maleshin kindly invited me to cooperate in the project on the journal's special issue on Ukrainian law. This is a very important, necessary, and timely initiative. As a person who has a total of 10 years of academic experience in both Russia and Ukraine, for me it was a great honor to be at the head of this serious joint Russian–Ukrainian academic project.

I do not hide the fact that the project of a special issue of the journal on Ukrainian law has faced certain difficulties. Several authors who first wrote to us about

the desire to participate in our competition for the publication of their articles, subsequently refused to participate in the contest with reference to the positions of the rectors of their universities. In Ukraine, the demand for scientists to publish in journals indexed in the Web of Science or Scopus databases is gradually beginning to be put forward. However, some potential authors informed us that, according to the decision of the rectors of their universities, publications in Russian academic journals indexed in WoS and Scopus will have issues with academic certification. The editorial board respects the positions of such scientists, since “the buck does not stop with them.” The editorial board does not have any illusions in terms of the level of “academic freedom” in Ukrainian humanitarian studies and state-owned universities. Fortunately, in Russia such ideology is not supported, that is, the articles of Russian scientists published in Ukrainian scientific journals indexed in WoS and Scopus are evaluated and counted on general grounds.

On the Internet, it is easy to find, even in Russian translation, the famous speech by Hermann von Helmholtz, an outstanding figure in the academic world of the 19<sup>th</sup> century, “On the Academic Freedom of German Universities,” spoken by him at the inauguration of the Rector at the University of Friedrich-Wilhelm in Berlin in 1877. He openly talks about the interference of the authorities in the affairs of universities. Specialists in the history of science are well aware that brothers Jacob and Wilhelm Grimm, famous throughout the world as storytellers, had serious problems with the authorities throughout the course of their careers, the latter considering the formers’ views “not sufficiently loyal.”

At the same time, the academic community did not defend them en masse. After all, many scientists by a kind of nature are conformists and gladly accept handouts from the authorities and are ready to comply with any instructions from the authorities. In the literature on the history of science in the 19<sup>th</sup> and 20<sup>th</sup> centuries, there are plenty of examples of the struggle of the authorities of different countries with “excessively free universities,” “not enough politically loyal professors,” examples which are not necessary to be provided in detail here.

Real life in universities is different from the ideal that Herman von Helmholtz described as “a free union of independent people, in which both professors and students were inspired by one interest only: the love of science, an alliance in which some tried to get acquainted with the treasures of spiritual development, abandoned by antiquity, and others – to inspire the new generation to the ideal aspirations that warmed their own lives – this was the beginning for universities, in its idea and features of an organization based on total freedom.” However, the authorities, having begun to provide funds to the universities, actually conditioned them by interventions in the management of universities. As the story of the brothers Grimm testifies, the authorities in some situations fired not only those professors to whom they had initial claims, but also those professors who supported them.

I would like to hope that since the 19<sup>th</sup> century, something has changed for the better in this matter, and the Governments in both Ukraine and in Russia will not

consider scientists as public servants who should write only what is pleasing to the authorities.

Any reader will easily be convinced that the purpose with which we publish our special issue is not a discussion on geopolitical issues on international relations or an expression of criticism about the current Ukrainian authorities. Life is not black and white, and not a one-way street. We believe that in Ukraine there are very diverse changes every year, some of which are for the better, some for the worse. However, this is a problem commonplace around the world. Our aim is to maintain academic contacts between Ukrainian and Russian scientists, and open scientific discussion on complex issues of modern law.

During the contest, the editorial board tried to select those articles that described practical problems at a high scientific level, and proposed ways to solve them. We rejected drafts of articles of a purely theoretical nature, for example, exclusively on clarifying certain definitions in legislation without justifying a sharp practical need for such clarification.

In some aspects, domestic Ukrainian law is better than Russian, in some worse. I hope that there will be a normal "competition of legislations," when legal orders mutually borrow from each other what another legal order had gotten ahead. I tried to demonstrate this in my article about comparing the new Ukrainian and Russian legislation on consumer lending. I hope that the Russian legislator will eventually borrow some norms of the Ukrainian legislation on consumer lending, which are more successful than Russian ones, better ensure an equitable balance of interests between the debtor and the creditor, and vice versa.

In many jurisdictions, there are heated debates around the problem of legal ethics. It is clear that the defense attorneys have duties both to their client and to the court. At the same time, the control over the interpretation of these duties, and supervision over their compliance, is the competence by both the courts and the disciplinary chambers inside the bar. The article by Tetyana Vilchyk was lauded by the editorial board with a clear and precise exposition of different doctrinal approaches to the various duties of lawyers. At the same time, the article has the necessary level of visibility, practical significance, because it analyzes the actual law enforcement practice of the Ukrainian bar disciplinary bodies as well as court process for professional liability of lawyers.

A fairly common phenomenon in Eastern Europe in the last 30 years is the so-called "lustration," that is, the temporary professional disqualification of top level public servants, who served for the former government, before a radical change of power. In Ukraine in 2014, there was a radical change of power, which its supporters call a "revolution of dignity," and its opponents, "an unconstitutional *coup d'état*." Some of the employees of the former government were dismissed and professionally disqualified. The Constitutional Court of Ukraine has already been examining the case on the constitutionality of lustration for 3.5 years since spring 2015, but has not

made any decision. A fairly large number of cases of lustration from other Eastern European states were also considered by the European Court of Human Rights. The article demonstrates a highly professional analysis of these decisions. So, it is impossible to underestimate the importance of research, which at a high professional level was conducted by Oleksandr Yevsieiev and Iryna Tolkachova.

The focus of the study, which was carried out by the constitutional legal scholars Hryhorii Berchenko and Serhii Fedchyshyn is the constituent power. Issues of adoption, changes in the provisions of the Constitution by the people or on behalf of the people are extremely controversial and politicized in any country in the world. The advantage of the article is that the authors were able to avoid unnecessary politicization, deeply examining the subject of their research from doctrinal positions. The article also is of practical interest. First of all, because of the need for constitutional reform being already an important part of the debate during the presidential election campaign, concerning the elections which will be held in Ukraine in the spring of 2019. In a more particular aspect, the frameworks of influencing the text of the Constitution by the Constitutional Justices is of interest. Especially in conditions when several judges of the Constitutional Court of Ukraine were dismissed in 2014 by the new Ukrainian authorities for an "erroneous" interpretation of the provisions of the constitution. Now they are trying to recover via the European Court of Human Rights.

Finally, it is sometimes necessary to descend from very high constitutional vertices to the land itself. According to the editorial board, very practical articles on forensic methods are as important as articles on high constitutional matters. Especially if they take into account the trends of time, in particular, the active arrival of technology into jurisprudence. Perhaps, forensic science has always been the most technologically advanced legal science. We decided to publish a collaborative study by Larysa Arkusha and Nataliia Chipko about methods of committing and the investigation of fraudulent motor vehicle transactions. We sincerely wish all our readers never to become victims of fraud. But if this happens, we hope that the forensic methods developed by our authors will really help in the search for criminals, bringing them to criminal responsibility, and reimbursing the victims of property damage caused by the crime.

Last but not least, we express special gratitude to Richard Morgan and Vince Skowronski for their professional and laborious work on the proofreading of drafts, which we selected on a competitive basis for publication in a special issue of our journal.