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The classification of the legal customs of the Ukrainian people: Historical-legal aspect

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Abstract

The article is devoted to the issues of analysing the legal significance of Ukrainian customs through the prism of various criteria which are not exhaustive but contributed to the systematization of knowledge about the Ukrainian customary law. In particular, the following criteria for the classification of legal customs are proposed: compliance with the legislation, the origin, nature of disposition, territorial distribution, sphere of legal regulation. The historical significance of legal customs based on the legal outlook of the Ukrainian people is revealed.

Keywords
custom, customary law, the Ukrainian people, legislation, legal norms, classification criteria

Legal custom takes a particularly important place in Ukrainian history, because thanks to its validity, the Ukrainian people had the opportunity to create their own law in the absence of their own state. Fundamental legal institutions of Ukrainian society were formed and developed in customary law over the centuries. Their validity was ensured by democratic courts of customary law — verv courts, kopa courts,

Cossack courts, etc. Customary law had a decisive influence on the formation of the legal tradition and legal culture of the Ukrainian people.

The palette of customs that exists in society is diverse, and therefore requires classification. In order to distinguish types of Ukrainian legal customs, it is worth choosing certain criteria, which can be the following: compliance with the legislation, the origin, nature of disposition, territorial distribution, sphere of legal regulation, etc. French comparativists relying on the ancient tradition, classified customary law norms according to the criterion of compliance with the law into three types:

— *secundum legem* (in addition to the legislation) — customary legal norms that supplement, develop, specify and clarify the legislative text;

— *praeter legem* (except for the legislation) — customary legal norms regulating social relations, not regulated by legislation;

— *adversus legem* (contrary to the legislation) — legal customs, the content of which contradicts the provisions of the legislation.[1]

The norms of customary law *secundum legem* are relative assistants of the legislator, since they regulate social relations together with the provisions of laws, but by supplementing the authoritative prescription of the state. In other words, we can say, the legal norm in such cases regulates the legal relationship only partially, deliberately allowing the legal custom to supplement the legal system in this part. As a rule, this approach is used in view of the peculiarity of a certain legal relationship, which is more convenient to supplement with customary law-making. For example, for this can be the Ordinance of the butchers' craft guild (*tsekh*), approved on August 22, 1620, by the Lviv magistrate. In particular, p. 10 of this document decreed that cattle should be slaughtered only in the authorized places "for supervision, according to ancient custom, so that there are no suspicious cattle."[2]

The sphere of regulation of legal customs *praeter legem* placed parallel to those social relations that are regulated by legislation. So, such legal customs do not receive direct sanction in the legislation, however, they do not come into conflict with it, since they do not directly intersect with it. In particular, to customs *praeter legem* there is a significant amount of family legal customs, and especially those that regulate personal non-property relations of the subjects of the family relations. Among them, for example, it is worth mentioning the legal custom of *pryimatstvo*, which was practiced in the Ukrainian villages until the 1920s. It consisted in accepting an unrelated person (son-in-law, orphan, worker, etc.) into the family (household) with the condition of working on the farm and supporting the owners in the event of their old age or other incapacity.[3]

The morals *adversus legem* according to the logic of supporters of positivist concepts of legal understanding, they can't be legal because they contradict the *legislation*. At the same time, guided by the general social, not special legal, dimension of law, such customs can be legal under the condition of their real effect in society

[1] R. David, K. Jouffret-Spinosi, *Les grands systèmes de droit contemporains*, Paris 2002, pp. 94–95.
[2] *The Economic Privileges of the City of Lviv in the 15th–18th Centuries: Privileges and Statutes of Craft Guilds and Merchant Corporations*, eds. M. Kapral, Ya. Dashkevych, R. Shust, Lviv 2007, p. 638.
[3] M. V. Hrymych, *Customary Civil Law of Ukrainians of the 19th and Early 20th Centuries*, Kyiv 2006, p. 354.

and the presence of its support. Of course, in most cases the states tried to counteract the customs *adversus legem*, even bringing the guilty to criminal responsibility. For example, in 1723, the Starodubskyi Regimental Court sentenced 39 participants of the pit court to cannon imprisonment,[4] as the procedural legislation of that time didn't allow pit courts to issue and carry out death penalty.

According to O. Shevchenko, whose opinion was that customary law in Ukraine existed as a given and eternal justice, "it could not be created all the time, because it sat in the consciousness of the people and it simply had to be found and applied."[5] Certainly, legal customs, although they have a certain legal conservatism, are not in absolute static, therefore they are able to evolve in the course of history. Their occurrence can be determined by quite different reasons and factors. Therefore, it is expedient to classify customary law norms according to their origin into customary law norms of archaic origin, religious origin, caused by social needs, formed by judicial practice, borrowed from the other nations and created by legislative inertia.

Among the legal customs of archaic origin (those originating from time immemorial), it is worth mentioning first of all *povolannia* — the Ukrainian legal custom of the notification of a crime. Levytskyi, substantiating his theory of the origin of the legal custom of *povolannia*, wrote: "this must be a remnant of the customary law of a very ancient times, when the public notification of the name of the murderer over the corpse of the murdered person had the force of a public verdict, condemning the criminal to the victim of family revenge."[6] In the following historical eras, *povolannia* changed its character, transforming from a kind of notification of the verdict of the tribal community court into a customary procedural action applied at the stage of the investigation of a criminal case.

The religious norms have the ability to transform into legal norms. In kopa law and judiciary in 14th–18th centuries Christian principles were closely intertwined with pagan ones. For example, the oaths were used both by the Holy Trinity and by the forces of nature (most often the earth). The ordeals, which were used in the court proceedings, were also a consequence of the pagan tradition. Thus, sometimes the testimony of the defendant could be obtained with the use of torture, which was called "torture" in the criminal justice system. These procedural actions were mostly trials (ordeals) by fire, iron and water, also known to ancient law. In addition, whipping of the defendant during interrogation was quite common. The iron test was used, as a rule, in cases of murder, and in other cases the water test dominated.[7]

The Christian influence on Ukrainian community justice was also reflected in the institutions of reconciliation and conditional sentencing. As noted by I. Mima, the religious norms are mandatory religious rules for the behaviour of people in society,

[4] Central State Historical Archive of Ukraine in Kyiv, F. 51 (General Military Office), Descr. 3, Case 952 (Case on punishment of members of the kopa court of the village of Khilchich), pp. 5–11.

[5] O. O. Shevchenko, *Customary Law of Ukraine of the 9th–19th Centuries*, Kyiv 2012, p. 53.

[6] I. Cherkaskyi, "Invocation over the corpse of a murdered man", [in:] *Proceedings of the Commission for Studying the History of Western-Rus and Ukrainian Law*, vol. 1, Kyiv 1925, p. 105.

[7] F. Leontovych, "Ruska Pravda and the Lithuanian Statute: Lithuanian legislation must be included in the scope of the study of history of Russian law as a matter of urgent necessity", [in:] *Anthology of Ukrainian Legal Thought*, vol. 2: *History of the State and Law of Ukraine: Ruska Pravda*, eds. Yu. S. Shemshuchenko et al., Kyiv 2002, p. 204.

therefore, depending on the type of legal system to which a certain country belongs and the nature of the violation, various measures of influence may be applied to persons who have violated the requirements of religious norms.[8] However, certain religious norms have the ability to acquire a legal character. So, in 1663 in the village in Richychi of the Berestey district, the trial court on sacrilege took place.[9] Therefore, as a result of the application of some Christian religious norms in kopa court proceedings, they were transformed into legal customs and became part of kopa law.[10]

Although the vast majority of legal customs are generated by certain social needs, nevertheless, such a basis for their emergence requires additional characteristics and an independent meaning. We can agree with S. Dnistrianskyi's opinion, that law is created by needs. The satisfaction of human needs required the participation of each individual in relations with other individuals, and therefore connections between them arose, community and society were formed. That's why each individual became dependent on each other. This dependence was expressed in social norms.[11] Such norms included legal customs.

An example of the formation of the Ukrainian legal custom based on the presence of a need can be the practice of the actual purchase and sale of a car, which is formalized as an authorization for the use and disposal of a vehicle (in everyday life, the so-called general authorization). The excessive bureaucracy and high cost of the procedure of transferring a car into the ownership of another person caused the formation of the so-called custom. So buying a car by proxy was widely practiced in Ukraine in the 1990s and at the beginning of the 21st century isolated cases of such buying and selling still occur, even today. This practice was widespread and well-known, and the state did not take significant countermeasures in this regard. At the same time, numerous inconveniences, risks and problems arising from these legal relations[12] led to the gradual withdrawal of Ukrainian society from the mentioned practice and its marginalization.

The value of judicial practice for the creation of legal customs seems to be more expedient to consider, guided by the guidelines of the founder of legal normativism H. Kelsen. In particular, he emphasized that the issue of the existence of a legal custom can only be resolved by a law enforcement authority, which is entrusted with the task of confirming or denying the fact of custom in a certain area of legal relations[13]. Therefore, court practice had a significant impact on the evolution of Ukrainian customary law throughout history. Subsystems of the Ukrainian customary law had their own judicial mechanisms which contributed to the creation, change and termination of legal customs.

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[8] I. V. Mima, "Characteristics of religious norms as a type of social norms", *The State and Law* 43, 2009, p. 137.

[9] Acts Issued by the Vilna Archeographic Commission, Chairman Yu.O. Krachkovskiy, vol. 28: Acts on Kopa Courts, Vilna 1891, p. 433.

[10] M. Bedrii, "'Kopa' law and its application in Ukrainian community justice (14th–18th centuries)", *ScienceRise: Juridical Science* 2019, no. 3 (9), pp. 32–38.

[11] S. Dnistryanskyi, "Customary law — and social ties", *Journal of Law and Economics* 4, 1902, p. 21.

[12] A. Makeeva, "Selling and buying a car: Legal nuances", *Juridichna gazeta*, 10.09.2021, https://yur-gazeta.com/golovna/prodazh-ta-kupivlya-avtomobilya-yuridichni-nyuansi.html.

[13] H. Kelsen, *Pure Theory of Law*; *The Problem of Justice*, transl. O. Mokrovolskyi, Kyiv 2004, p. 254.

When courts of customary law issued similar decisions in similar cases, there was a possibility that the content of these decisions would become a general rule and gain validity in the form of legal custom. Among the customary legal norms that made up the system of kopa law, norms formed in this way took an important place. There are reasons to assume that some wording of kopa decrees (decisions of community courts) indicate this. For example, at the meeting of kopa court, which took place in 1583 in the Lutsk County, it was noted: "For a long time, criminals among us have been searched for with nothing but kopa."[14]

Cases of borrowing the legal customs of one nation from another were quite common. For example, the Carpathian customary law of the 14th–18th centuries contained many borrowings from Romanian, Moldavian and Polish law.[15] As a result of the spread of Magdeburg law in Western Ukrainian cities, which began in the 14th century, the reception of European legal custom, known as storage law, took place on Ukrainian lands. It consisted in the fact that through the city to which this right was granted, it was forbidden to bring goods without putting them up for sale. Storage law was divided into conditional and unconditional. If a city received an unconditional storage law for a particular commodity or for all commodities, the foreign merchant had to sell them entirely in that city and had no right under any circumstances to take them further. This made it possible for city merchants to dictate prices to visitors and receive significant profits from resale at inflated prices. If the city had a conditional storage law, then the visitor undertook to display the goods for sale for a clearly defined period (for example, for 5, 7, 10 days), after which he had the right to carry on the remaining items not bought from him during that time further.[16]

At the same time, it is not necessary to unequivocally tie the storage law to the introduction of Magdeburg law on Ukrainian lands. It is quite likely that this custom was in effect in Ukrainian cities even before Magdeburg law was granted to them. Thus, in a letter of 1498 from the Grand Duke of Lithuania Alexander to the Moscow ambassador Ivan Teleshev, it was stated: "In our land, in Kyiv and in Lutsk, storages have long been used by overseas merchants."[17] Therefore, it is quite difficult to determine the origin of individual legal customs.

The customary legal norms, created through legislative inertia are formed when a certain normative legal act or treaty lost legal force (or their draft didn't enter into force due to certain reasons), but its provisions continued (or began) their application in society. An example of such application can be the Statute of the Grand Duchy of Lithuania of 1588 which actually operated in Left-Bank Ukraine until the 1840s,

[14] A. Hurbyk, "Kopa courts in Ukrainian lands in the 14th–16th centuries", *Ukrainian Historical Journal* 1990, no. 10, p. 113.

[15] R. Shandra, M. Bedrii, "Village courts and judicial proceedings under Ukrainian and Wallachian law: Historical-legal comparison (14th–18th centuries)", *Visnyk of the Lviv University. Series Law* 58, 2013, pp. 121–122.

[16] I. Y. Boyko, *Sources and Characteristic Features of Law in Galicia as Part of the Polish Kingdom (1387–1569)*, Lviv 2010, p. 184.

[17] Acts Related to the History of Western Russia, Collected and Published by the Archaeological Commission, Vol. 1: 1340–1506, St. Petersburg 1846, p. 176.

although it was officially implemented only in Starodubskyi Regiment.[18] Analysing the "Systematic collection of legal customs existing in the Poltava province," O. Voloshchenko came to the conclusion that the norms of the aforementioned Statute of 1588 continued legal regulation as customs even in the second half of the 19th century.[19] The actual validity in the legal system of the Hetmanate Ukraine of the unapproved codification project "Laws by which the Lesser Russian people are judged" of 1743 should also be recognized as an example of legislative inertia, as a result of which the corresponding network of legal customs was formed.

This situation is typical for international law because there is a number of international treaties that haven't gone through the formal procedure of acquiring legal force, but have been actually applied. Therefore, their validity in the relevant relations is equated to international custom.

According to the criterion of *disposition nature*, customary law norms can be classified into permissive, binding and prohibitive. Thus, the right of inheritance gave the community the right to choose — to extradite a criminal who was on its territory or to pay a fine instead.[20] The legal custom of *zaymanshchyna* allowed to acquire the right to land through its first development (primary processing).[21] These norms were permissive. Kopa law obliged the inhabitants of the kopa district to participate in the meetings of the community court.[22] The absence of certain persons from the pile could cause them to be found guilty of committing a crime, so this norm was binding. Cossack law forbade bringing women to the territory of Sich under the threat of the death penalty,[23] which can be considered a prohibitive norm.

The permissive norms of customary law can also include usage in the sense of legally non-binding rules of behaviour that were formed as a result of uniform practice in a certain sphere of social relations, provided that such custom has a sign of generality (depersonalization) and other main features of legal custom.

Some researchers distinguish between customs and usages. In particular, G. Danilenko and other experts of international law consider it undesirable to identify usage and legal custom.[24] It seems that the concept of usage (in the above sense) largely corresponds with the concept of a permissive norm of a customary law. In other words, if a customary rule of conduct is able to regulate legal relations, but does not compel certain actions, only allowing them to be committed, then such a customary

[18] M. P. Vasylenko, "How the Lithuanian Statute was abolished (from the history of the codification of Western Rus and Ukrainian law)", [in:] M. Vasylenko, *Selected Works*, vol. 2: *Legal Works*, eds. I. B. Usenko, T. I. Bondaruk, A. Yu. Ivanova et al., Kyiv 2006, p. 311.

[19] *Legal Custom as a Source of Ukrainian Law of the 9th–19th Centuries*, ed. I. B. Usenko, Kyiv 2006, pp. 50–51.

[20] I. M. Sobestianskyi, *Circular Guarantee Among the Slavs According to the Ancient Monuments of Their Legislation*, Moscow 2011, p. 121.

[21] A. Ya. Efimenko, *Essays on the History of Right-Bank Ukraine*; *The Lesser Russian Nobility and Its Fate*, Moscow 2011, p. 157.

[22] M. Bedrii, *Kopa Courts in Ukrainian Lands in the 14th–18th Centuries: Historical-Legal Research*, Lviv 2014, p. 180.

[23] O. Apanovych, "Cossack republic", *Monuments of Ukraine* 1989, http://ukrlife.org/main/evshan/uacossak.htm.

[24] G. M. Danilenko, *Custom in Modern International Law*, Moscow 1988, pp. 9–10.

rule does not lose its legal validity. Therefore, the use of the concept of usage in this sense can only make terminology convenient for certain research areas (in international law or trade law), but by no means goes beyond the concept of a legal custom.

According to *territorial distribution*, legal customs are interstate (international customs and those applied in several or even many states), national (operate throughout the state), ethnic (characteristic of a certain ethnic group), local (are valid in a specific area) and branch (developed in a certain industry — for example, in retail trade).[25]

The classification of the Ukrainian legal customs provides grounds for distinguishing groups of relevant norms depending *on the subject of the relations regulated by them (the sphere of legal regulation)*: norms that regulate state power relations, family and property relations, procedural norms, as well as norms that define particular deeds as offenses.[26] An example of customary-legal norms that regulated state power relations can be the procedure of "putting the prince on the table," which began the reign of the ancient Ruthenian princes. After the prince's candidacy was approved, he received a regular diploma. The prince and the people on the main square of the city made mutual oaths and kissed the cross. Then he went to the main cathedral of the city, where the bishop blessed him with a cross for the reign, handed him the signs of princely power and put on his head a cap decorated with jewels. After that, he was solemnly enthroned.[27]

Throughout history, custom had an important role in the Ukrainian civil law. Customary law had a significant impact on the development of property rights, including those borrowed from Roman law. The main grounds for acquiring the right of ownership under Cossack customary law were as follows: creation of a thing by one's own hands; obtaining fruit from a thing (trees, animals, etc.); distribution of military, hunting or fishing spoils; concluding a contract (including through trade); receiving an inheritance; finding (including treasure); tenure.[28]

Hrozovskyi drew attention to the fact that military booty in the 18th century began to lose its former importance as a basis for acquiring property rights in Zaporizhzhia Sich, and the economic activity became the priority basis instead.[29] However, isolated facts of acquisition of property rights through war booty occurred even in the second half of the 18th century. Thus, in 1755, two serfs (by ethnic origin — Tatar and Kalmyk, respectively) of Vasyl Perfyliev fled from the Don to Kalmius palanka of Zaporizhzhia Sich with horses and things. In connection with this, in 1757, Don chieftain Danylo Yefremov appealed to the Kish chieftain of Zaporizhzhia Sich to return the fugitives and property to the landowner. In response, Kish chieftain wrote that he didn't look for the mentioned serfs in Sich, and the corresponding property was "inflated (divided — *authors*) according to custom" by the Kalmius foreman.[30]

Many norms of the Ukrainian customary law also functioned in the law of obligations. For example, *skipshchyna* or *spolshchyna* was a land lease agreement where

[25] O. A. Vasianovych, *Legal Custom in Modern Legal Systems*, Kyiv 2014, p. 52.
[26] *Legal Custom as a Source of Ukrainian Law of the 9th–19th Centuries*, pp. 26–27.
[27] P. P. Pyatnitskiy, *Tale of the Enthronement of Russian Tsars and Emperors*, Moscow 1990, p. 4.
[28] I. Y. Boyko, *Legal Regulation of Civil Relations in Ukraine (9th–20th Centuries)*, Kyiv 2012, p. 159.
[29] I. Hrozovskyi, "Customary law of Zaporizhia Sich", *Soviet Law* 1991, no. 10, p. 58.
[30] Archive of Kish of New Zaporizhzhia Sich. Description of Cases 1713–1776, Ref. L.Z. Histsova, L.Ya. Demchenko, Kyiv 1994, p. 32.

the tenant paid the landowner part of the harvested crop under the contract. The tenant had to sow the land with his grain, grow it and harvest it. The amount of payments to the lessor was determined in proportion: every third haycock, every fourth haycock, etc. As M. Hrymych notes, this size fluctuated in different periods and in different regions of Ukraine. It was concretized by the local custom of the respective village on the basis of the peculiarities of the natural and socio-economic conditions of the given area.[31]

Chubynskyi noted in his studies of customary law that Ukrainian peasants also called this custom "giving land from the haycock."[32] This led to the terminological definition of this custom as *skipshchyna* (payments from the harvest). *Spolshchyna* (payment from the harvest of the field) was a type of *skipshchyna*, which became widespread in Podillya. It consisted in the fact that the lessee and the lessor equally shared the harvest obtained from the leased plot of land.[33] It can be assumed that *spolshchyna* was practiced in territories where the soil was more fertile, so it required less effort to cultivate it. Therefore, there was an expediency of equal distribution of the grown crop.

In Scythian customary law, the principle of minority inheritance of property was in effect, according to which the youngest son inherited his father's house and all the household alone. Since these objects were the main property of the Scythians, the advantages of the younger son were obvious. Elder sons had no inheritance rights, but when they married, they received a share of their parents' property. Daughters also did not have the right to inherit their parents' property.[34] It is worth noting that in Kyiv Rus the younger son[35] also inherited the parents' house, but whether this was a consequence of the Scythian influence remains an open question of historical-legal science. The sole inheritance of the paternal estate by the youngest son was practiced in Ukrainian lands for many centuries after the disintegration of Kyiv Rus. Quite often in the Ukraine, parents bequeath their house to their youngest son even today.

Traditionally, customary legal norms occupied a leading place in the system of regulating family relations. For example, the Ukrainian customary law allowed the divorce of spouses without the involvement of the state. This procedure was sometimes performed exclusively in the family environment in the presence of relatives and friends, before whom the husband and wife declared that they were terminating their marriage by mutual consent and understanding. At the indicated family meeting, the property affairs of such spouses were resolved, related to the dowry (taken by the wife when returning to her parents' house) and *vino* (remained by the husband). After that, according to Ukrainian customary law, the marriage was considered terminat-

[31] M. V. Hrymych, *Customary Civil Law of Ukrainians of the 19th and Early 20th Centuries*, p. 397.
[32] P. Chubynskyi, *Short Essay of the People's Legal Custom, Compiled on the Basis of the Attached Civil Decisions: Proceedings of the Ethnographic and Statistical Expedition to the Western Russian Region, Equipped by the Imperial Russian Geographical Society. South-Western Department*, vol. 6, St. Petersburg 1872, pp. 63–64.
[33] M. V. Hrymych, *Customary Civil Law of Ukrainians of the 19th and Early 20th Centuries*, pp. 397–398.
[34] O. A. Havrylenko, *History of the State and Law of Ukraine: Ancient Times*, Kharkiv 2011, p. 10.
[35] O. Nelin, "On the question of inheritance law of Kyivan Rus", *Scientific Bulletin of Chernivtsi University. Science of Law* 2002, no. 131, p. 34.

ed. Subsequently, the ex-spouses could register a divorce with state authorities. As a rule, this happened in connection with the intention to enter into a new marriage.[36]

The norms of criminal responsibility in Ukrainian customary law were quite strict, but in the practice of law enforcement, judges showed considerable humanism, applying exemption from punishment or its replacement. For example, instead of a certain burdensome physical punishment, the public courts could sentence the guilty to three weeks of standing outside the church, during which they had to tell all the parishioners about the sin (crime) they had committed.[37] Among the procedural norms of Ukrainian customary law, we can mention the norms on the sworn kopa. The aforementioned investigative action consisted in the fact that the victim selected several people from each village and made them swear that they had not committed the crime and did not know the criminal. The sworn kopa took place the day after the third collective interrogation of the kopa district. People who refused to take the oath were found guilty of a crime.[38] A more extensive and detailed analysis of procedural norms of Ukrainian customary law is contained in chapter 4 of monograph on kopa courts.[39]

From the analysis of the documentary material, it also follows that in the Ukrainian society of the middle ages there were also customary legal norms, which occupied an important place in the regulation of tax and customs relations. For instance, in the 17th century in the city of Bolekhiv, "according to ancient custom", the Jews delegated two representatives "to the hearing of the accounts" of city taxes.[40] The texts of regulatory and law-enforcement acts quite often did not establish the specific amount of the tax or duty, but contained a reference to the customs of a certain area or sphere of trade. For example, on May 4, 1606, King Sigismund III, granting the Magdeburg Law to the city of Tetiyev of the Kyiv land, noted: "And fairs and trades will be allowed in that city for all residents of our states and foreign merchants, coming with all kinds of familiar goods, to trade, to sell and buy, paying to Prince Ostrozkyi a trade duty on all his goods according to the usual custom, as it happens in other such places."[41]

Thus, numerous Ukrainian legal customs can be classified according to various criteria — compliance with the law, origin, nature of disposition, scope of legal regulation, etc. The proposed classification criteria, of course, cannot be considered uniform and comprehensive, but are intended to contribute to the systematization of knowledge about Ukrainian customary law, its forms and content. The variety of legal customs indicates that they were not uniform models of behaviour but differentiated social norms. Legal customs, provided they are carefully studied, appear not only as simple established rules, but also as a complex formulas of social coexistence with numerous layers, in which folk experience is crystallized.

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[36] O. V. Melnychenko, *Customary Law*, Cherkasy 2008, pp. 48–49.

[37] O. O. Shevchenko, *Customary Law of Ukraine of the 9th–19th Centuries*, p. 157.

[38] N. Ivanishev, *About Ancient Rural Communities in South-Western Russia*, Kyiv 1863, pp. 18–19.

[39] M. Bedrii, *Kopa Courts in Ukrainian Lands in the 14th–18th Centuries*.

[40] V. P. Marochkin, *Ukrainian City from the 15th to the Middle of the 17th Century: Customary Legal Attributes as a Historical Source*, Toronto 1999, p. 107.

[41] Documents of the Bratslav Voivodeship 1566–1606, Ref. Mykola Krykun, Oleksiy Piddubniak, Lviv 2008, pp. 1022–1023.

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Класифікація правових звичаїв українського народу: історико-правовий аспект

Анотація

У статті проаналізовано правове значення українських звичаїв через призму різних критеріїв, які не є вичерпними, проте сприяють систематизації знань про українське звичаєве право. Зокрема запропоновано такі критерії класифікації правових звичаїв: відповідність закону, походження, характер диспозиції, територіальна поширеність, сфера правового регулювання. Розкривається історичне значення правових звичаїв, що ґрунтувалися на правовому світогляді українського народу.

Ключові слова
звичай, звичаєве право, український народ, законодавство, правові норми, критерії класифікації

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Klasyfikacja zwyczajów prawnych ludu ukraińskiego: aspekt historyczno-prawny

Streszczenie

W artykule dokonano analizy znaczenia prawnego ukraińskich zwyczajów przez pryzmat różnych kryteriów, które nie są wyczerpujące, ale przyczyniają się do usystematyzowania wiedzy o ukraińskim prawie zwyczajowym. W szczególności zaproponowano następujące kryteria klasyfikacji zwyczajów prawnych: zgodność z ustawą, pochodzenie, charakter dyspozycji, zasięg obowiązywania, sfera regulacji prawnej. Ujawnia się historyczne znaczenie zwyczajów prawnych opartych na światopoglądzie prawnym społeczeństwa ukraińskiego.

Słowa kluczowe
zwyczaj, prawo zwyczajowe, społeczeństwo ukraińskie, ustawodawstwo, normy prawne, kryteria klasyfikacyjne