страхування) й обов'язкові (екологічні платежі, схема торгівлі квотами на викиди парникових газів в ЄС);

— змішані правові засоби (стандартизація й фінансування в сфері охорони навколишнього середовища) (Мірошниченко О. П. Сучасні тенденції розвитку екологічної політики і прав ЄС та України: правові аспекти/ О. П. Мірошниченко// Європейські перспективи. – 2010. – № 2. – С. 53).

Отже, розвиток європейського екологічного права характеризується пошуком оптимальних підходів до вирішення складних проблем управління природними ресурсами та збереження природи.

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THE LEGAL PERSPECTIVE OF THE EVOLUTION OF THE CONSENT TO POSTHUMOUS ORGAN DONATION IN THE USA

The main legal provisions for organ transplant in Ukraine are contained in the Law of transplantation of organs and other anatomical materials of 1999 with amendments (The Gazette of the Verkhovna Rada of Ukraine (GVR), 1999, N 41, p.377). It regulates all types of transplantations to be performed in the country, including the type of donation and the consent that needs to be obtained. It is clear for the live organ donation that donors can be only the close relatives of the recipient, and obviously, informed consents for organ procurement and implantation are required from both the potential donor and the recipient, respectively. The life donation does not leave room for any variation of consent and the way it should be obtained. As opposed to it, the deceased organ donation is a situation when there are several options available – either the person has to express her consent or refusal to become a donor after death, or this consent or refusal may be expressed, but is not required, so that one of them is presumed. In Ukraine the law provides for presumed refusal of deceased organ and tissue donation, while the way the consent is obtained is not clearly detailed in the matter of how active should be the health care provider in requesting this consent, from whom should they request it, and who is eligible to give it. The Ukrainian legislative actors are still in the process of debating over this issue. Moreover, they have accepted the situation of deceased donation stagnation in the country over the last 5 years, and are focusing primarily on different types of instructions for life donation currently under civil discussion (Draft Order of the Ministry of Health of Ukraine «On approving the instructions for donation of homotransplants for transplantation from a live related donor», – 2011. http://moz. gov. ua/ua/portal/Pro_20111014_0. html). In the situation when Ukraine is striving to find its way to promote deceased organ donation, the international experience should be taken into account. For this reason the U. S. experience is of particular interest to us, given the continuous evolution, amendment and coexistence of various transplant related federal and state legislations.

Legislation encouraging the postmortem donation of organs has developed mainly over the last 10-15 years. As scholars have noticed, at common law, people were prohibited from giving anyone authority over what should be done with their body parts after their death (McNeil, D. R., The Constitutionality of «Presumed Consent» for Organ Donation, Hamline J. Pub. L. & Pol'y p.343, 344p. – 1989). The premise for this prohibition was the fact that no one could have a property right in a dead body. As cited by McNeil, D. R., in the case Williams v. Willians it was held that «[...] there can be no property right in the dead body of a human being [...] a man cannot by will dispose of his dead body. If there can be no property in a dead body, it is impossible that by will or any other instrument the body can be disposed of.» However, the person's closest living relatives did enjoy a «quasi-property right» in the decedent's body immediately after death. This right was based on the belief that all individuals deserved a decent burial and that the family could best protect the interests of the deceased in this regard (Kurnit, M. N., Organ Donation in the United States: Can We Learn From Successes Abroad? 1994). As mentioned by Scott, R. in his paper, no significant amendments have been made to this law until the late 1940s when the viability of corneal transplants was accepted by the international medical community (Scott, R. The body as property. 1981). This recognized achievement in medical practice has prompted legislatures to change pertinent laws in order to reduce the barriers to cadaveric organ donation. In 1947, California's legislature passed session laws Chapter 125 and Chapter 126 which granted citizens the legal right to make posthumous donations of their entire bodies, or specified parts of them, to hospitals, universities, or «similar institutions.» These laws set no limits on the uses for which body parts could be utilized by these institutions. Thus, they implicitly permitted the removal of organs for transplantation. The laws protected the decedent by prohibiting his family from vetoing his wishes. The legislation also allowed the decedent to specify his desires in a will or other written instrument. In 1957, these statutes were amended to include eye, artery, and blood banks as well as «other therapeutic services» as permissible recipients. In 1968, a further amendment elaborated procedures for tissue procurement. After the first successful kidney transplant performed in the USA in 1954, and the growing success of transplant procedures during the late 1950s and 1960s, it became clear that the existing legislation governing organ donation was insufficient to procure the number of organs needed to satisfy the demand (Caplan, A. L. Organ transplants: the costs of success, The Hastings Report, p.23, 1983). By the mid-1960s the majority of states had some legislation regarding organ and tissue procurement, which varied significantly among states with regard to the following questions: who could authorize tissue removal and donation; who could receive such donations; what the allowable uses were for donated parts; the formalities regarding the giving and revocation of gifts; and the degree of liability to which doctors acting in good faith were subject (Scott, R. The body as property. p.71. – 1981). In 1965, the Commissioners of Uniform State Laws have created a subcommittee to study the issues concerning organ donation and make recommendations for a uniform law. It resulted in the approval of the Uniform Anatomical Gift Act (UAGA) in July 1968 at the National Conference of Commissioners, and later by the American Bar Association and the American Medical Association. Within five years the UAGA had been adopted in some form by all fifty states and the District of Columbia. In 1987 the UAGA was substantially amended (Unif. Anatomical Gift Act, § 3, 8A U. L. A. – 1987). In its pure form, the UAGA provides that any person older than eighteen years can make a gift, effective upon death, of all and any

part of her body. It further provides that when the deceased has not expressly made a gift or expressly objected to donation during her lifetime, the deceased's family members can make a gift of any or all parts of her body. The various family members are given the following priority for authorization: spouse, adult children, parents, adult siblings, guardians, any other person authorized or under obligation to dispose of the body (Unif. Anatomical Gift Act § 3, 8A U. L. A. – 1968). When the UAGA was amended in 1987, it added «a grandparent of the decedent» after siblings and eliminated the «any other person» designation (Erik S. Jaffe, «She's Got Bette Davis ['s] Eyes»: Assessing the Nonconsensual Removal of Cadaver Organs Under the Takings and Due Process Clauses, 90 Colum. L. Rev. p.528, 530p. – 1990). The UAGA restricts gift recipients to hospitals, doctors, medical and dental schools, universities, organ and tissue banks, and any specified individual in need of a transplant. It specifies that gifts of bodies or parts are only to be used for transplants, therapy, research, education, and advancement of medical or dental science. In October 1984, Congress enacted the National Organ Transplant Act (NOTA) to create a more comprehensive network of organ donors and recipients and to raise public awareness of the need for human organs (Pub. L. 98-507, as amended by Pub. L. 100-607 and Pub. L 101-616. http://optn. transplant. hrsa. gov/policiesAndBylaws/nota. asp). NOTA established an organ procurement and transplant network, the United Network for Organ Sharing (UNOS) to oversee a national registry of potential donors and a waiting list of recipients. It prohibited commerce in human organs but provided financial assistance to organ procurement agencies (OPAs). It also established a task force on organ transplantation, directed by the secretary of Health and Human Services, to examine and report on the medical, ethical, legal, economic, and social barriers to organ donation. The Task Force report, published in 1986, advocated that state legislatures pass routine inquiry legislation. By this time several states had taken the initiative and already had enacted either required request or routine inquiry laws. The theory behind required request proved to be appealing to the populace. In 1985, Oregon was the first state to pass required request legislation (Virnig, B. A., Caplan, A. L. Required Request: What Difference Has It Made?, Transplantation Proceedings p.2155, 2155p. – 1992). New York and California followed suit that same year. By the end of the decade, forty-five states and the District of Columbia had passed some form of required request or routine inquiry legislation (Andersen, K. S., Fox, D. M., 1988). Required request laws vary greatly from state to state (Sipes, D., 1987). The strongest laws require hospitals to request donation and document the approval or refusal on the death certificate. The weaker laws merely require that hospitals develop protocols to ensure that families are apprised of their option to donate. State laws vary as to whether hospitals are required to inform of the option to donate, or actually request donation. The stricter laws mandate high degrees of hospital monitoring, protocol, and documentation and extensive involvement of state health departments. These laws generally permit fewer exceptions to the requirements. State laws also vary as to the scope of immunity and penalties imposed for noncompliance.

In conclusion it is worth emphasizing that the United States abandoned its system of encouraged voluntarism, a policy which placed the onus of donation solely on each citizen in the 1980s, and replaced it with systems of required request and routine inquiry. These latter systems require the health care industry to actively pursue organ donations. The effectiveness of these laws has not yet been conclusively determined. Moreover, many countries have also instituted

bold measures to reduce their organ shortages. They have abandoned their purely voluntary approaches to organ donation and have enacted presumed consent laws. These presumed consent systems place a burden only on individuals who are opposed to donating their organs at death. While the presumed consent systems differ in their scope, all of them have generated significant increases in organs procured. The apparent initial success these approaches have had in procuring organs abroad warrants consideration of such a plan for Ukraine.

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РОЗВИТОК ПРОЦЕСУ ЄВРОПЕЙСЬКОЇ ІНТЕГРАЦІЇ В КОНТЕКСТІ ПРАВ ЛЮДИНИ

Права людини органічно вплетені в соціальну діяльність людей, їхні суспільні відносини, способи буття індивіда. Вони є нормативною формою взаємодії людей, упорядкування їх зв'язків, координації їх вчинків і діяльності, запобігання протиріч, протиборства, конфліктів на основі поєднання свободи індивіда зі свободою інших людей, з нормальним функціонуванням суспільства і держави. Такі права, як право на життя, на гідність, недоторканість особи, свободу совісті, думок, переконань, автономію особистого життя, право на участь у політичних процесах, є необхідними умовами влаштування життя людини в цивілізованому суспільстві і повинні бути беззастережно визнані та охоронятися державами.

Важливе значення у побудові сучасної правової держави відіграє міждержавна співпраця в галузі захисту прав та свобод людини.

Сьогодні практично не існує у світі країн, які б при вирішенні політичних, економічних та інших проблем не вступали у відповідні відносини з іншими країнами світу та міжнародними організаціями. На фоні тенденції формування єдиних просторів спостерігається розширення міждержавного співробітництва. Проте цьому процесу суттєво заважає, серед інших факторів, існуюча різноманітність національних правових систем, їх нездатність швидкої адаптації з міжнародно-правовими нормами.

Проблемі європейської інтеграції присвячено велика кількість робот більшість яких присвячено економічній та/або політичній інтеграції у Західній Європі, а також інституційному устрою європейських організацій. Недостатньо дослідженим є вплив ідей дотримання та захисту прав людини на процес європейської інтеграції.

Становлення та сучасний стан однієї з найефективніших систем захисту прав та свобод людини не був миттєвим він тривав довгий час впродовж еволюції людської цивілізації та свідомості.

Відносини європейських держав протягом всієї історії характеризувалися рядом особливостей. По-перше, деякі європейські народи входили до складу Римської імперії, що не могло не позначитися на їх більш-менш загальному підході до вирішення міжнародних проблем. Держави, що утворилися на території колишньої Римської імперії,