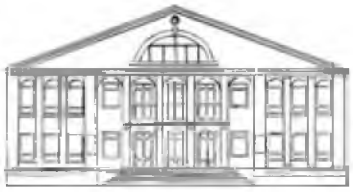
Держава та регіони



Серія: ПРАВО
2018 р., № 4 (62)

Науково-виробничий журнал

виходить щоквартально

Журнал включено до переліку фахових видань згідно з постановою президії ВАК України від 06.11.2014 р. № 1279

Голова редакційної ради: О. В. Покатаєва, доктор юридичних наук, доктор економічних наук, професор

Головний редактор:
В. Г. Лукашевич, доктор юридичних наук, професор, Заслужений юрист України

Редакційна колегія:
М. О. Сергатий, кандидат юридичних наук, доцент (заступник головного редактора)
Ю. В. Абакумова, доктор юридичних наук, доцент
С. К. Бостан, доктор юридичних наук, професор
О. П. Гетьманець, доктор юридичних наук, професор
В. В. Городовенко, доктор юридичних наук, Заслужений юрист України
Н. О. Гуторова, доктор юридичних наук, професор, академік Національної академії правових наук України, Заслужений юрист України
С. Ф. Денисов, доктор юридичних наук, професор
Т. А. Денисова, доктор юридичних наук, професор, Заслужений юрист України
Д. М. Єрмоленко, доктор юридичних наук, професор
А. В. Іщенко, доктор юридичних наук, професор
Є. Д. Лук'янчиков, доктор юридичних наук, професор
В. К. Матвійчук, доктор юридичних наук, професор
В. М. Огаренко, доктор наук з державного управління, професор
В. М. Пальченкова, доктор юридичних наук, професор
О. П. Рябчинська, доктор юридичних наук, професор
О. Ю. Синявська, доктор юридичних наук, професор, Заслужений юрист України
В. М. Стратонов, доктор юридичних наук, професор, Заслужений юрист України
П. В. Хряпінський, доктор юридичних наук, професор
О. В. Макух, доктор юридичних наук, доцент
О. С. Саінчин, доктор юридичних наук, професор
В. Я. Киян, кандидат юридичних наук, доцент
Л. Г. Удовика, доктор юридичних наук, кандидат філософських наук, доцент
О. В. Прудивус, кандидат юридичних наук, доцент

Іноземні члени редакційної колегії
Г. Ю. Бистров, доктор юридичних наук, професор (Російська Федерація)
Б. Єлчич, доктор наук, професор (Хорватія)
О. Ю. Грачова, доктор юридичних наук, професор (Російська Федерація)
М. В. Сенцова, доктор юридичних наук, професор (Російська Федерація)
О. Хорват-Лончаріч, доктор наук, професор (Хорватія)
Е. Д. Соколова, доктор юридичних наук, професор (Російська Федерація)
Х. Арбутіна, доктор наук, професор (Хорватія)
О. А. Ялбулганов, доктор юридичних наук, професор (Російська Федерація)

Відповідальний редактор: С. В. Белькова
Редактори: С. В. Старкова
Технічний редактор: А. С. Лаптєва
Дизайнер обкладинки: Я. В. Зоська

Журнал включено до міжнародної наукометричної бази Index Copernicus International (Республіка Польща)

Засновник:
Класичний приватний університет
Свідоцтво Державного комітету інформаційної політики, телебачення та радіомовлення України про державну реєстрацію друкованого засобу масової інформації
Серія КВ № 14176-3147 ПР від 24.04.2008 р.

Видавець:
Класичний приватний університет
Свідоцтво Державного комітету інформаційної політики, телебачення та радіомовлення України про внесення суб'єкта видавничої справи до Державного реєстру видавців, виготівників і розповсюджувачів видавничої продукції
Серія ДК № 3321 від 25.11.2008 р.

Журнал ухвалено до друку вченою радою Класичного приватного університету
31 жовтня 2018 р., протокол № 2

Усі права захищені. Повний або частковий передрук і переклади дозволено лише за згодою автора і редакції. При передрукуванні обов'язкове посилання на видання: Держава та регіони. Серія: ПРАВО. – 2018. – № 4 (62)

Редакція не обов'язково поділяє думку автора і не відповідає за фактичні помилки, яких він припустився.

Адреса редакції:
Класичний приватний університет
69002, м. Запоріжжя, вул. Жуковського, 70б.
Телефон: (0612) 220-58-42, 8-067-7744481
Телефон/факс: (0612) 63-99-73.

Здано до набору 24.10.2018.
Підписано до друку 05.11.2018.
Формат 60×84/8. Ризографія. Тираж 300 пр.
Замовлення № 34-18Ж.
Виготовлено на поліграфічній базі Класичного приватного університету

ISSN 1813-338X

© Класичний приватний університет, 2018

ЗМІСТ

ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА

О. Й. Вовк
ЛИТОВСЬКИЙ СТАТУТ 1588 РОКУ ЯК ПРАВОВА ПАМ'ЯТКА
МІСЬКОГО САМОВРЯДУВАННЯ В УКРАЇНІ.....**4**

В. В. Євдокимов
ЕВОЛЮЦІЯ ВИБОРЧОГО ЗАКОНОДАВСТВА
ДО ПРЕДСТАВНИЦЬКИХ ОРГАНІВ ВЛАДИ
ГАЛИЧИНИ ДРУГОЇ ПОЛОВИНИ XIX – ПОЧАТКУ XX СТ. **12**

S. V. Kudin
HUMAN RIGHTS AS THE OBJECT OF COMPARATIVE-HISTORICAL LEGAL
RESEARCHES IN THE WORKS OF M. D. IVANYSHEV **17**

Л. О. Макаренко
ПРАВОКУЛЬТУРНІСТЬ ЯК НЕОБХІДНА УМОВА РОЗВИТКУ ПРАВОВОЇ КУЛЬТУРИ.....**22**

Г. П. Пономарьова, А. П. Андрєєва
ПРОЦЕС СТАНОВЛЕННЯ КРИМСЬКОТАТАРСЬКОЇ ДЕРЖАВНОСТІ:
ВІД УЛУСУ ДО ХАНСТВА.....**28**

КОНСТИТУЦІЙНЕ ПРАВО; МУНІЦИПАЛЬНЕ ПРАВО

Ю. С. Кононенко, С. В. Джолос
ПЕРШІ КОНСТИТУЦІЇ СВІТУ ЯК ВИДАТНІ ПАМ'ЯТКИ
КОНСТИТУЦІЙНО-ПРАВОВОЇ ДУМКИ ТА ДЕРЖАВОТВОРЕННЯ.....**35**

ЦИВІЛЬНЕ ПРАВО І ПРОЦЕС; СІМЕЙНЕ ПРАВО

І. В. Бондар
ПРОБЛЕМНІ АСПЕКТИ ОКРЕМОГО ПРОВАДЖЕННЯ У СПРАВАХ,
ЩО ВИНИКАЮТЬ З ОСОБИСТИХ НЕМАЙНОВИХ ПРАВОВІДНОСИН.....**41**

Є. М. Клюєва, Г. О. Ткаченко
ЩОДО ПИТАННЯ ПРАВОВОГО СТАТУСУ ФРАНЧАЙЗИНГУ В УКРАЇНІ.....**47**

Т. М. Ямненко, І. Ф. Літвінова
СУДОВА ВІТЧИЗНЯНА ПРАКТИКА У МЕДИЧНИХ
КРИМІНАЛЬНИХ ПРОВАДЖЕННЯХ І ЦИВІЛЬНИХ СПРАВАХ.....**51**

ТРУДОВЕ ПРАВО;
ПРАВО СОЦІАЛЬНОГО ЗАБЕЗПЕЧЕННЯ

В. В. Бонтлаб
ЗАКОНОДАВЧЕ ЗАБЕЗПЕЧЕННЯ ВИРІШЕННЯ
ІНДИВІДУАЛЬНИХ ТРУДОВИХ СПОРІВ: НАУКОВО-ТЕОРЕТИЧНИЙ АСПЕКТ.....**58**

А. О. Гудзь
ПОНЯТТЯ ТА ПРАВОВЕ РЕГУЛЮВАННЯ БЛАГОДІЙНОЇ ДІЯЛЬНОСТІ В УКРАЇНІ.....**65**

Н. С. Пузирна
ОСОБЛИВОСТІ РЕГУЛЮВАННЯ ПРАЦІ НЕПОВНОЛІТНІХ:
МІЖНАРОДНИЙ ДОСВІД ДЛЯ УКРАЇНИ.....**69**

UDC 340.5 (091):341.231.14

S. V. Kudin
Candidate of Juridical Sciences, Senior Lecturer,
Senior Lecture of the Department of Theory and History of Law,
Government and Constitutional law
of the National University of the State Fiscal Service

HUMAN RIGHTS AS THE OBJECT OF COMPARATIVE-HISTORICAL LEGAL RESEARCHES IN THE WORKS OF M. D. IVANYSHEV

The article investigates the substantive nature of our historical comparison of human rights in different nations by M.D. Ivanishev. It was found that the idea of the individual in the works of the scientist is closely intertwined with contrasting historical comparison of supranational law of Slavic and German ethnic communities with cultural characteristics of nations. Found that the development of human rights seemed to him as a definite, slow and gradual evolutionary process. It was found that M.D. Ivanishev investigated the differences of some institutions of Private Scandinavian and Bohemian law in the pre-Christian period. Comparing the legal customs of those nations, he found that the legal status of the individual provisions of the Bohemian law had more advanced features than the norms of the Scandinavian law.

Key words: *human rights, comparative-historical research, historical legal school, Slavic law, scientific works of M.D. Ivanyshev.*

Problem statement. The comparative history of law is one of the promising areas of modern domestic jurisprudence. With the development of post-non-classical science the formation of a polylogue of cultures, civilizations, regional and continental supranational formations, the intensification of globalization there is a need for a brand new solution by Ukrainian comparativists of a number of important scientific problems related to the dialectical evolution of objects of historical and legal realities.

An important factor of the realization in the modern period of the original idea of justice, both at the international and national levels, is the pluralistic attitude to the content of the rights and freedoms of a man and citizen, the recognition of them as inherent essence of human existence, their compliance, assurance and protection. The idea of the existence of the human rights was justified in the countries of Ancient East, ancient cities-states of Greece, Ancient Rome, in the Middle Ages. New theories that proved the equality of people and their other rights started to appear later, in the XVII – XVIII centuries; these theories have found their reflection in the well-known Declaration of Independence of the United States, the Declaration of the Rights of the Man and Citizen in France, etc.

After the Second World War the rights of a man and citizen, the mechanisms of their protection were fixed in the national basic laws, as well as in international legal instruments. At the same time the legal science has identified a group of human and civil rights, has formed a conception of generations of human rights and so on.

It should be noted, that a significant contribution to the formation of the ideas of human rights, the development of various theories, that explained the rights and freedoms of a man and citizen, were made by domestic scientists. In particular, the study of human rights in comparative-historical aspect was carried out by a famous scientist, a representative of the national historical school of law, Professor of the University of St. Volodymyr M.D. Ivanishev.

The task of this work is to find out the nature of the conducted by M.D. Ivanishev comparative-historical studies of the development of human rights.

Analysis of the research and publication. Historical and comparative legal studies that were conducted by the abovementioned scientist have been the subject of study by not only pre-revolutionary and Soviet, but also by modern scholars. Creative and social activity by M.D. Ivanyshev was studied in the writings of A.F. Kistyakovsky,

© Kudin S. V., 2018

A.A. Kotlyarevsky, M.P. Zagoskin, M.F. Vladymyrsky-Budanov, M.O. Maksymeyko, A.A. Malinowski, A.F. Skakun, I.B. Usenko, V.I. Andreytsev, V.A. Korotky, T.I. Bondaruk, I.S. Gritsenko, S.I. Myhalchenko, O.D. Tikhomirov, M.A. Damirli, O.N. Lysenko, O.O. Kresin and other scientists. In particular, as I.B. Usenko and T.I. Bondaruk noted, creativity and scientific ideas of the scientist preceded the emergence of the concept of western law [1, p. 16; 2, p. 21–22]. According to the researchers, M.D. Ivanishev was a prominent representative of the historical school of law, belonged to the supporters of the «community» theory of the origin of the state of ancient Slavs. However, there is the need for a more detailed coverage of the views expressed by M.D. Ivanishev in his comparative-historical writings of views on the development of human rights.

Purpose of article. The purpose of this work is to fill the gaps in the field of research of an informative nature conducted by M.D. Ivanishev of historical comparison of the human rights development in different nations.

Presentation of the main material. It should be noted that the research of human rights by the scientist should be viewed through the prism of not only comparative-historical methodology, but also through the supported by him ideas of the historical school of law, and in the context of scientist's grounding of the idea of unity of various Slavic peoples' legal institutions. Thus, in a number of works he holds the idea of the historical school of law, applies the terminology of this school, "...the private right emerged from the family life, and so has the spirit of the people with its character differences"; "...the legislation has evolved from a long established custom, a purely Slavic roots..." [3, p. 88, 106]; "The strength and unity of the national spirit is especially reflected here..."; "...we can portray faith in its original form as it emerged from the very lives of the people..." [4, p. 2, 3], etc.

However, according to A.F. Kistyakivsky, V.I. Andreytsev, V.A. Korotky, M.D. Ivanishev has everywhere "... the view that the more advanced principles dominated among Slavs", "Ivanishev actually borrowed the method and terminology of the German historical school of law, but applied them to Slavic laws" [5, p. 13; 6, p. 103]. It should be emphasized, that M.D. Ivanishev was looking for the difference between the laws of Slavic and Germanic peoples as well as was trying to prove the kinship between legal institutions of the Slavic peoples. This is most clearly manifested in his work "On the charge for murder in ancient Rus and ancient Slavic legislation compared with the Germanic faith". Thus, M.D. Ivanishev notes that the aim of study of Bohemian, Moravian, Mazowietskiy, Polish, Lithuanian, Serbian, Russian peoples' legislation is the identification of "purely Slavic origins", their separation from the German and Roman ones. He emphasizes that, "Between the old Slavic domestic legislation there is a close connection arising from consanguinity between Slavic peoples ..." [4, p. 33, 111–112]. It is necessary to support the opinion of some scientists that M.D. Ivanishev should be considered the representative of the national school of Slavic law [7, p. 22; 8, p. 25; 9, p. 91; 10, p. 192].

It should be noted that in the study of Slavic legislation, M.D. Ivanishev used a number of methods, the leading among them is the comparative-historical method. In the said work "On the charge for murder in ancient Rus and ancient Slavic legislation compared to the Germanic faith", he explains that to identify the distinctive features of legal phenomena between people of different origin, firstly some common traits among the kindred peoples should be identified. That is why he compared German law of different times, trying to find similarities in them, and they were expected to constitute the nature of the German Faith [4, p. 2]. Acting by analogy, M.D. Ivanishev was trying to find a common payment per head of Slavic peoples including through exploration of the old Russian criminal law. This methodological stance of M.D. Ivanishev was evident in another work – "Discourse on the idea of the individual in the old Bohemian and Scandinavian law", in which he singled out for comparison, in his opinion, the best representatives of the German and Slavonic laws – Scandinavian law and Bohemian law. Thus, at the first stage the scientist was trying to identify the characteristic features of legal phenomena of each of the ethnically joint peoples.

The second, and in fact the leading stage of the application of historical-comparative method is comparison of the indicated features with the purpose of allocation of the distinguishing features of legal phenomena. The scientist has found some differences in the regard to charge for murder of German and Slavic laws [4, p. 111–112]. These differences constituted purely ethnic peculiarities of the charge for murder of German and Slavic peoples.

However, an important aspect of the application by the scientist of historical-comparative method is

not only identification and contrasting of the signs of legal phenomena of different ethno-cultural European peoples. As M.D. Ivanishev noted himself, comparison of Slavonic legislation is necessary for "explanation of the ancient Russian law..." [4, p. 112]. So, historical-comparative method, according to the scientist, should serve to a deeper exploration of national law.

Analysis of scientific views of M.D. Ivanishev is not accidental: it allows to find out the peculiarities of his attitude to the development of human rights of different nations. He was one of the first in the national historical and legal scholarship, who expressed the opinion, "the idea of the individual is the main idea of the law <...> anybody, any man by his innate intelligence, is an individual, and as a consequence by his nature must have a range of determined rights, both in relation to the state, and in relation to other citizens..." [3, p. 85]. However, he emphasizes that such an idea has existed in the history of mankind for a certain time, it passed the period of formation and development.

The scientist said that this process was being determined in different historical periods by different reasons. Thus, in the ancient city-states of Greece such reasons were the following: religion, state will; in Rome – the internal struggle of states; in some nations of Europe in the pre-Christian period – the consciousness of people that depended on their customs [3, p. 86–87]. However, the idea of the individual according to M.D. Ivanishev has a diverse and holistic character depending on the territorial implementation of this idea. In particular, in the Ancient East States the priority of the state over the individual, religious basis of the legislation predetermined the metaphysical state of the idea of the individual. In contrast, in the ancient Greece the idea of the individual was the basic principle of legislation, so it had all the grounds for further development, especially in the times of the Ancient Rome [3, p. 86].

It is interesting, that on the agenda M.D. Ivanishev puts the issue of peculiarities of understanding of the human rights of the Pagan Nations, he notes, that despite the coarse beliefs they quite early learned the notion of human rights. The solution of the problem of the degree of development of the idea of the individual of the European peoples before the final formation of a state and the introduction of Christianity, the scientist links with the ideas of the historical school of law. That is, practices arising from the inner life of every nation, contained ideas about human rights and were the rule for the external behavior of the people [3, p. 87].

It was a common platform, on which the development of the idea of the individual in each European nation was based. However, there were differences the interpretation in the "collective consciousness" of every nation of the content of human rights and depended, in the opinion of the scientist, on the peculiarities of the national character. In order to identify fundamental differences in the understanding of the "idea of the individual" by these nations, M.D. Ivanishev chooses to compare Germanic (Scandinavian) and Slavonic (Bohemian) laws. The scientist is absolutely sure that within a supranational community, each part – people – has legal institutions and norms similar to those ones of the other ethnically related peoples. That is why he considers sufficient to compare legal institutions of two nations with different origins. His choice of Scandinavians and Bohemians was due, mainly, to preservation by them of the pagan nature of life for a long time and to the reflection of legal norms in symbolic-poetic form. The object of study becomes private law, since according to the scientist it originated from family life, and therefore embodies the spirit of all the people that have different characteristics the best [3, p. 88]. M.D. Ivanishev examines the relationship between spouses, between parents and children, between the free people and the slaves belonging them.

As it can be seen from the analysis of the abovementioned work, the position of women in the norms of the Bohemian law was better than in the norms of the Scandinavian one. The scientist highlights such advantages, as the presence of female dowry (that is, moving to the house of her husband she had her own property); the distributed and recorded rights of the husband and his wife; the wife "...could save her husband, pursued by a blood family revenge"; death penalty was provided for the rape of a woman. In addition, women were granted the right to occupy the throne [3, p. 90–93]. But the Scandinavian's wife was considered to be a bought thing, marriage was seen as a civil contract, there were concubinage relationships, the wife had to implement all requirements of the husband unconditionally, for the abuse of a woman the convicted person had only to pay a fine [3, p. 93].

Similarly, M.D. Ivanishev emphasizes freer state of children in the family under the Bohemian law. He notes that, "Scandinavian law gives father too broad authority over the children, while the Bohemian law limits the power of the father too much and extends the rights of children beyond the proper limits"

[3, p. 97]. Also he considers to be the advantage of Bohemian law the determination of the rights and responsibilities of children and parents; under the Scandinavian law the independence of children disappears under the father's authority, who could sell the baby or kill him [3, p. 95–97].

The conclusion by M.D. Ivanishev concerning the state of slaves in the norms of the Scandinavian and Bohemian laws is interesting enough. The scientist recognizes that, in general, "the Slave was the property of the owner, and therefore obeyed to the tyranny of his master unlimitedly, with his body and soul" [3, p. 98]. However, he notes the substantial differences in the position of a servant in the abovementioned nations of Europe and the position of the non-free in the ancient world. These, in particular, are: the right to enter into marriage; a certain part of the payment for the offense, suffered by the slave, belonged to him personally (thus, he was recognized as the subject); the slave had the right to property. As V.I. Andreytsev and V.A. Korotky noted, "...the task of the author was not showing the differences between the two systems of law, but the demonstration of readiness of the nations of Europe for the perception of the Christian idea of the superiority of the European pagan law in comparison with the East and even the antique ones"[6, p. 109–110].

Conclusions and proposals. Thus, from the above we can make the following conclusions:

1. The research by the scientist of human rights should be viewed through the prism of not only comparative-historical methodology, but also through the supported by him ideas of the historical school of law, and in the context of scientist's grounding of the idea of unity of various Slavic peoples legal institutions. The idea of personality in the scientist's works was closely intertwined with the conducted by him contrasting historical comparison of supranational law of Slavic and German ethnic communities taking into account the cultural characteristics of nations.

2. Development of Human Rights is understood by him as a kind of evolutionary process, but only within the Europe: in legislations of the States of the Ancient East the idea of the individual did not receive its implementation. The idea of the individual was evolving slowly in historical-comparative studies by M.D. Ivanishev, several stages of development can be distinguished: the period of Ancient Greece and Rome (its formation was due to the influence of religion, political will, the internal struggle of states, the idea of the personality is the basic principle of legislation); post-Antique pre-Christian period (the nations, where the paganism and customs are dominant, are highlighted) – there is the development of the concept of human rights, the quality content of which is different for different nations due to the peculiarities of their customs; Christian period.

3. In the study of the development of human rights M.D. Ivanishev focused on differences in the institutions of private law of the German (Scandinavians) and Slavonic (Bohemian) nations in pre-Christian period. The scientist singled out the characteristic features of the legal status of women and children in the family and society, the slave in the norms of the Scandinavian and the Bohemian laws. On the basis of comparison of the legal customs of these nations he determined that the legal status of persons in the norms of the Bohemian law had more advanced features than in the standards of the Scandinavian law.

References:

1. Usenko I.B. Kyyivs'kyy universytet i rozvytok yurydychnykh doslidzhen' v Ukrayins'kiy Akademiyi nauk. Visnyk Kyyivs'koho natsional'noho universytetu imeni Tarasa Shevchenka. Seriya yurydychni nauky. 2000. Vyp. 39. P. 14–17.
2. Bondaruk T.I. Zakhidnorus'ke pravo: doslidzhennya i doslidnyky. K.: In-t derzhavy i prava im. V.M. Korets'koho NAN Ukrayiny. 2000. 160 p.
3. Sochynenyya N.D. Yvanysheva / pod red. A.V. Romanovycha-Slavatynskoho. K.: V unyversyteskoy typohrafyy, 1876. 451 p.
4. Yvanyshev N. O plate za ubyystvo v drevnem russkom y druhykh slavyanskykh zakonodatel'stvakh v sravnenyy s hermanskoy veroy. K.: V Unyversytet·skoy typohrafyy, 1840. 112 p.
5. Kystyakovskyy A. Professor N.D. Yvanyshev y eho sochynenyya. Yurydycheskyy vestnyk. 1877. № 7/8. Otd. 2. P. 1–24.
6. Andreytsev V.I. Mykola Ivanishev: Monohrafiya. K.: Praym, 1999. 224 p.
7. Damyrly M.A. Sravnytel'no-pravovaya nauka v Ukrayne: teoretyko-metodolohycheskye tradytsyy (KhIKh – nachalo KhKh vv.): Nauch.-ucheb. yzd. Odessa: Fenyks, 2007. 96 p.
8. Mykhal'chenko S.Y. Kyevskaya shkola v rossyyskoy ystoryohrafyy (Shkola zapadno-russkoho prava). M.: Prometey; Bryansk: Yzd-vo BHPU, 1996. 186 p.
9. Kresin O.V. Rozvytok porivnyal'noho pravoznavstva v Ukrayini v mezhakh istorychnoyi shkoly prava. Byuleten' Ministerstva yustytsiyi Ukrayiny. 2006. № 4. P. 90–96.
10. Kresin O.V. Ivanishev Mykola Dmytrovych. Porivnyal'no-pravovi doslidzhennya. 2006. № 1. P. 191–195.

Кудін С. В. Права людини як об'єкт порівняльно-історичних правових досліджень у працях М. Д. Іванишева

У статті досліджується змістовний характер проведеного М.Д. Іванишевим історичного порівняння розвитку прав людини у різних народів. З'ясовано, що ідея особистості у працях ученого тісно переплiталась з контрастним історичним порівнянням права наднаціональних слов'янських та німецьких етноспільнот з урахуванням культурних властивостей народів. Встановлено, що розвиток прав людини уявлявся ним як певний повільний та поетапний еволюційний процес. З'ясовано, що М.Д. Іванишев досліджував відмінності деяких інститутів приватного скандинавського та богемського права у дохристиянський період. На підставі порівняння правових звичаїв цих народів він визначив, що правовий статус особи за нормами богемського права мав більш прогресивні риси, ніж за нормами скандинавського права.

Ключові слова: *права людини, порівняльно-історичні дослідження, історична школа права, слов'янське право, наукова творчість М.Д. Іванишева.*

Кудин С. В. Права человека как объект сравнительно-исторических правовых исследований в трудах Н. Д. Иванишева

В статье исследуется содержательный характер проведенного Н.Д. Иванишевым исторического сравнения развития прав человека у разных народов. Выяснено, что идея личности в трудах ученого тесно переплеталась с контрастным историческим сравнением права наднациональных славянских и немецких этносообществ с учетом культурных свойств народов. Установлено, что развитие прав человека представлялось ему как определенный медленный и поэтапный эволюционный процесс. Выяснено, что Н.Д. Иванишев исследовал отличия некоторых институтов приватного скандинавского и богемского права в дохристианский период. На основаниiи сравнения правовых обычаев этих народов он определил, что правовой статус личности за нормами богемского права имел более прогрессивные черты, нежели за нормами скандинавского права.

Ключевые слова: *права человека, сравнительно-исторические исследования, историческая школа права, славянское право, научное творчество Н.Д. Иванишева.*