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ТЕОРЕТИЧЕСКАЯ И ПРИКЛАДНАЯ ЮРИСПРУДЕНЦИЯ

Theoretical and Applied Law

"Laws must go hand and hand with the progress of the human mind."

Thomas Jefferson

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Opening Remarks by the Editor-in-Chief
Law Faculty of NWIM is the Leader in Law Education and Science

2021 marks the twenty-fifth anniversary of the foundation of Law Faculty of North-West Institute of Management of RANEPA. The faculty was founded on May 15, 1996 by the order of the Rector of the North-West Academy of Public Administration under the President of the Russian Federation. At the origins of Law Faculty were scientists, professors and practitioners who previously worked at St. Petersburg State University, Leningrad Higher Party School, Higher School of Trade Unions and a number of other higher educational institutions of the city that carried out activities in the field of law education. Among them were Doctors of Science Lyudmila Ivanovna Antonova, Yuri Yakovlevich Baskin, Tatyana Vasilyevna Ivankina, senior researcher Kira Anatolyevna Moraleva, Alexander Alexandrovich Starovoitov, who later became the Dean of the Faculty and head of the Department of Constitutional and Administrative Law, and many others whose names are included in the golden fund of lawyers of the country[1].

Thanks to the efforts of professors and administration, Law Faculty quickly gained a well-deserved reputation as an effective and dynamically developing structure that provides professional training of highly qualified lawyers for state and municipal authority bodies, as well as for private commercial and non-profit organizations. Many well-known professors and scientists, civil servants and businessmen have graduated from the university and now they successfully implement the knowledge and skills acquired during their years of study at the faculty. More than twenty years of my own life are connected with the faculty, and therefore it a few personal memories seem quite appropriate.

My teaching at Law Faculty began in 1998, when I was a post-graduate student at the Department of Civil and Labor Law, which at that time was headed by Professor L.I. Antonova. It is hard to forget deep and vivid lectures on labor law and Roman private law that she gave to undergraduate and graduate students. Invaluable experience, as well as conceptual and methodological developments gained during these lectures, later formed the basis of my teaching activities. Also, senior comrades and mentors, such as Y.Y. Baskin, V.S. Fridman, and T.V. Ivankina[2], had a great influence on the formation of scientific and pedagogical skills of the representatives of the younger generation. Under the guidance of Tatyana Vasilyevna, I made a research for the degree of Candidate of Sciences (Law), it was presented in 2000 in the Dissertation council at the faculty.

T.V. Ivankina is well known to the members of the lawyers' community, first of all, as a specialist in the field of labor law, as the author of relevant research on fundamental and applied problems of legal regulation of labor and service relations[3]. The undisputed achievement of Tatyana Vasilyevna was scientific guidance of the candidate's dissertation in the scientific field of Theory of Law and State (12.00.01) as the history of the teachings of law and the state. It contained no less than a declaration of the creation of a new legal understanding[4]. It seems that the provisions formulated in the research with the active participation (and sometimes at the insistence) of T.V. Ivankina quickly became a fact of scientific life, influencing further research in this field.

I am deeply convinced that it was thanks to the efforts of Tatyana Vasilyevna, who considered belonging to a scientific school the main advantage of a lawyer, that the paper attracted favorable attention of such outstanding researchers as D.I. Lukovskaya, A.V. Polyakov, L.I. Spiridonov and I.L. Chestnov, who provided invaluable assistance in further work with recommendations and friendly support. It is worth noting that the works of these scientists (under the leadership of A.V. Polyakov in 2017 I presented my Doctoral dissertation at St. Petersburg State University), who gave considerable effort to cooperation with Law Faculty, formed the basis of the modern paradigm of legal knowledge in our country. I am proud to consider each of them my teacher, and I would like to name them all.

Currently Law Faculty of North-West Institute of Management of RANEPA occupies a leading position in the educational and scientific fields. The Faculty is the leader in St. Petersburg in the number of students, actively developing educational programs in the field of law. In particular, the faculty has five master's programs, which is an achievement for any academic higher education institution. Innovative educational technologies are being developed, including the field of distance

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[1] About the history of the faculty and the circumstances of its creation, see more: Antonova L.I. Serving the law is the holy duty of a lawyer // Managerial consulting. 2011. No. 4. pp. 65-73.

[2] I think it would be unfair not to mention T N. Kirillova, M.I. Sychev, and M.G. Shah, who worked at the faculty in those years, who, by the way, belonged to the students of the great civilist A.V. Venediktov. Thus, in the work of the Faculty of Law of the SSAGS – SZIU, the link between generations is maintained and the precious traditions of Russian jurisprudence are preserved and multiplied.

[3] See, in particular: Ivankina T. V. Problems of regulation of working time // News of higher educational institutions. 1997. No. 2 (217). pp. 49-57; The emergence of labor relations: some legal problems // Russian Yearbook of Labor Law. 2008. No. 3. pp. 167-174; Private law and public law principles in the regulation of labor of civil servants // Russian Yearbook of Labor Law. 2014. No. 9. pp. 188-207; Particular features of sources regulating official relations of civil servants // Russian Law Journal. 2016. No 2 (107). pp. 151-164.

[4] See: Razuvaev N. V. Norm of law as a phenomenon of legal culture: Diss. ... Ph. D. in Law St. Petersburg: SSAGS, 2000.

learning, the effectiveness of which was successfully confirmed during the SARS-CoV-2 coronavirus pandemic. Of course, the key to the success of educational activities is the research activity of the faculty, namely the existence of a number of unique scientific schools developed by its professors.

Among the most relevant research areas developed by Law Faculty are the problems of legal instrumentalism (application of legal means), anthropology of law, philosophy and sociology of law, legislative regionalism, integration law, ethnopolitical conflictology, legal regulation of the digital space, provision of state and municipal services, constitutional responsibility, electoral law, legal personality of executive authorities, state responsibility to individuals, the evolution and digital transformation of subjective civil rights, their judicial protection, combating corruption and extremism, as well as a number of other issues.

A truly invaluable contribution to the in-depth consideration of these problems is made by the Dean of the faculty S.L. Sergevnin, heads of departments M.V.Tregubov, Kirilenko, V.P. Solovyova, A.K. Spitsnadel, Professors L.A. Antonova, L.B. Eskina, P.A. Ol, V.A. Sapun, A.A. Starovoitov, I.L. Chestnov, Associate professors G.V. Alekseev, V.R. Atnashev, I.S. Alyokhina, V.P. Esenova, E.V. Kastorskaya, O.I. Lepeshkina, V.N. Safonov and many others. I would like to emphasize that representatives of the leading scientific schools of Law Faculty provide comprehensive assistance to the journal 'Theoretical and Applied Law', acting as members of its editorial board, regular contributors of the journal and reviewers, which has had a beneficial effect on the work of the journal, the quality of the publications and a high level of its content.

Like any anniversary, the twenty-fifth anniversary of the faculty means not just a summing up, but also planning further work. So, in the near future, it is planned to hold the Third Baskin Scientific Conference, dedicated to the centenary of the birth of Yuri Yakovlevich Baskin. The topic of the next conference, namely, challenges and prospects for the development of law and the state in the epoch of information, on the one hand, develops the topics discussed at previous conferences, and, on the other hand, reveals new aspects of legal reality that have acquired special significance in modern conditions. I am happy to say that since the First Baskin Conference, which were covered in detail in the journal[5], this event has reached an international level, and Russian and foreign scientists, whose works are widely known, have taken part in it. We hope that the high level of previous conferences will sustain in the future, which will allow the Baskin Conference to remain an important event of intellectual life.

This issue of the journal 'Theoretical and Applied Law' is also dedicated to the anniversary of Law Faculty. It contains the works of the professors devoted to the study of relevant scientific problems. The central topic of the issue is digital transformation of the modern law and order, which, for obvious reasons, has become more active in the context of the pandemic. At the same time, the variety of topics of the articles published on the pages of the journal also attracts attention. The authors focus on the factors of the efficiency of positive law (S.L. Sergevnin), digital transformation of subjective rights, as well as mechanisms of their legal protection (N.V. Razuvaev, V.P. Kirilenko, G.V. Alekseev), the impact of the pandemic on legal regulation (V.V. Firsov, D.A. Afanasyev), the functioning of state authorities and local self-government (I. Hoffman, M.A. Volochkovskaya), other topical issues of material and procedural law (A.A. Elaev, A.Y. Piddubrivnaya).

A vivid example of Law Faculty of North-West Institute of Management of the Russian Academy of National Economy and Public Administration clearly shows that today the experience of 'university' science, closely related to the needs of higher education and practical law-making and law enforcement activities, is the main driving force that opens up broad prospects for scientific development.

Nikolay V. Razuvaev,
Editor-in-Chief

[5] See: Shmarko I. K. Subjective rights in the conditions of the modern legal paradigm (review of the Interuniversity Baskin Scientific and Practical Conference) // Theoretical and Applied Law 2019.No 1. p. 92 et seq.

On the Efficiency Factors of Positive Law

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ABSTRACT
The article discusses some of the topical theoretical and legal and philosophical and legal problems of lawmaking. According to the author, the efficiency of the application of legislation in the mechanism of legal regulation directly depends on the quality of lawmaking, including its ideological content and scientific elaboration. Based on the works of reputable lawyers of the past and present, the author convincingly proves that the technique of legislative activity determines the effectiveness of the adopted normative legal acts, the totality of which forms a positive law. Guided by the considerations expressed in the article, the author formulates a number of recommendations aimed at improving the legal, technical and substantive aspects of positive law in order to increase the efficiency of legal regulation.
Keywords: legal regulation mechanism, sources of law, positive law, legislation, efficiency of legal regulation, legal technique.

The methodological prerequisites for the conception of the legal phenomenon itself set the main vectors for the subject research area. Precisely, it is the multitude of approaches to the study of this conception that, in fact, provokes the diverseness of the efficiency factors of the phenomenon. It forms the purpose of the research, including the analysis of the efficiency facts of positive law in the context of various methodological perspectives (approaches) of the indicated phenomenon.

To wit, if we consider law as an instrument of social management, then its efficiency can be shown as the outcome of legal regulation of public relations. Such a «managerial» approach inevitably has an impact on the definition of the law efficiency, which in this context means the ratio of the goal of a legal norm and the results of its regulatory influence. The goal is the leading criterion of this ratio. It is the efficiency factor of legal norms of behavior. At the same time, the general conditions for the effective operation of legal norms are the quality of legislation, which appropriately (adequately) mediates general social, economic and political regularities and public inquiries objectively generated by them. Within this approach, the quality of law enforcement and the quality of legal awareness at all levels also refer to the general conditions for the efficiency of legislation.

Whereupon, consideration of the efficiency of law within the framework of the «legal norm – individual» scheme, although complicated by an indication of the influence of «positive» and «negative» phenomena, is an abstract approach. Within this framework, it is impossible to disclose the real efficiency of any historically defined legal phenomenon without understanding what the efficiency of law is. In fact, before a legal norm begins to regulate the relevant social relations in the context of human behavior, it is determined by specific social relations. Not abstract «positive» and «negative» conditions, but social relations determine the concrete content of the norms and their effectiveness. On the other hand, the sociological formula «the behavior of an individual is a function of the interaction of his social positions» forces to move the legal norm from the center of the scheme to the place of one of the conditions that, together with objective factors (primarily socio-economic), affect human actions. For this reason, the named list of general legal conditions for the efficiency of a legal norm should be significantly expanded by including social factors and establishing a hierarchy in their interaction. Only under such conditions the research can escape its formal character and become socially relevant.

Another approach involves the analysis of the efficiency of legal institutions, focused on the behavioral experience of the individual as a criterion for the efficiency of any factors (including legal norms) influencing these acts. The better a legal norm is assimilated by an individual, the deeper it penetrates into the structure of the personality and transforms into its attitudes, the more the actions of people correspond to legal requirements and, therefore, the more effective the normative act is.

Considering the efficiency of law to be due to many factors, it is impossible to establish their role in the effectualness of the studied normative act without systematization of these factors. In this case a systematic approach comes to the fore.

There at, the study of the effectiveness, in particular, of legislative activity, is due to the entire set of socio-cultural, economic, political and other factors that operate not only at the level of an individual legal order, but also in the global legal context as a whole. Under such circumstances, the efficiency of the law becomes an integrative result of the interaction of a large number of variables, that its quantitative assessment today is hardly possible even in the case of engaging the most modern computer technology.

Nonetheless, it is quite obvious that in modern science the type of theoretical cognition that presumes the study of social phenomena as complex organic systems is brought to the fore. This does not mean that the study of the law efficiency in its relatively independent existence ceases to be important. It is still relevant for direct legal practice and therefore should be the subject of special analysis and studied by the branch sciences primarily. Whereupon, a combination of the law legitimacy categories and its efficiency is only possible at the level of a legal meta-theory

It is not easy to apply a system analysis in any field of knowledge, despite the apparent availability and clarity of the abstract principles that are to be guided and have been disclosed by a large number of publications of a philosophical nature. This may explain why the attempts made to apply system concepts in legal science are currently not used, despite extensive use in the 70s and 80s of the last century. In any case, we must admit that the results obtained still do not correspond to the potentialities that could be expected.

Nevertheless, the use of system analysis to solve problems of jurisprudence and the problem of the efficiency of law, in particular, is a necessity due to the peculiarities of its research subject. First of all, this relates to the study of the legal norms efficiency. Its purpose is to find out how legal regulations work in public life. Consequently, when studying the legal rules of behavior efficiency the subject of analysis is not only the rule, the lawful or illegal behavior of individuals, the activities of legal institutions, society as an initial object of sociological theory, but the interaction of all these objects and its results. Thus, a multi-object nature and a poly-systemic subject of research emerge, and the corresponding analysis acquires features of a poly-systemic nature on this account. This condition indicates that a theoretical study of the legal norms efficiency problem, i.e. research in terms of the general law theory, should overcome «subject-centrism» and study legal norms efficiency in interaction with social factors, that are currently operating in the state and its legal system as a whole, and at the level of the society where general social factors operate. Besides, the «subject-centrism», which might be inherent by sectoral legal disciplines if necessary, must be overcome. Thereat, a transition should be made from the «systemic-centrism» of the law theory as a general legal theory to a poly-systemic theory of a socio-legal nature, where the subject is multi-objective and is part of a higher-level system – the system of society as a whole. As the result, it determines all the systemic qualities of individual social phenomena (legal norms in particular).

Thus, the main requirement that a study of the legal norms efficiency in the context of the law legitimacy must meet is its implementation within the framework of a wider social system, with the necessary application at all stages of the systemic approach. Let us consider what the implementation of this approach in the framework of theoretical and legal research should actually mean.

The systematic analysis methodologically presupposes consideration of the same phenomenon in two qualitative aspects – in terms of its qualitative nature and in terms of its qualitative specificity. First, its functional and structural qualities, and then its specific historical systemic properties are determined. It is specified that in the first case, the phenomenon is taken by itself, in its most general and abstract moments, and in the second – as an element or component of a given system, as a systemic phenomenon.

Legal science distinguishes these two aspects of consideration of legal reality in general. However, their differentiation in the positive law analysis at large and the subsequent synthesis are still not carried out consistently enough. In this connection, considering the action of law mechanism problem, jurisprudence refers mainly to qualities that can be characterized as a qualitative nature. In this case, the analysis is carried out only at the level when the law impacts people and their behavior. This section of research is mainly limited by the framework of «law – individual» and «law and its subjects» relations. On the contrary, referring to the genesis processes, the historical fate of law in general and legal systems of a certain type, the main attention is paid to the interaction of law and society. Herein, preference is given to the qualitative specificity of law and its system-wide properties[1].

Whereupon, it is quite obvious that we should talk about law as an integral social phenomenon in both cases, fully manifesting both of the considered characteristics of its qualitative structure at each level at the same time. In this connection, the first level should reveal the general characteristics of law and its efficiency, and the second should reveal its historical modifications, including the section of its efficiency. Only in such an analysis is it possible to understand law and its functioning as a concrete historical social phenomenon. This actual application is the only social approach to its study and it is a prerequisite for the formation of scientific criteria for its legitimacy.

Thus, the particular historical (or social) approach, by virtue of its target setting, presupposes the study and comparison of two aspects of qualitative certainty – qualitative nature and qualitative specificity – of legal phenomena (law – individual, society – law). Though, the specificity can be understood only within the framework of the general rules of the law functioning, only by virtue of their implementation through the regulations of a particular social system existing at multiple levels. The specific quality has the peculiarity of influencing the quality nature. The latter can be manifested only in a specific way, i.e. it can exist only in the form of a concrete historical modification and in no other way. Special aspects of a particular social situation often actualize one of them, and, as a result, it is subjected to analysis in different historical periods at multiple levels. Therefore, this does not exclude, but, on the contrary, presupposes a separate consideration of these qualitative determinations applied to the entire phenomenon at large.

[1] S. S. Alekseev, for instance, differentiates these two sides of the analysis on the reason, considering them in different volumes of his fundamental course «General Theory of Law» (Alekseev, S.S. General Theory of Law. Vol. 1.M., 1981.Vol. 2. 1982.)

In legal science, in our view, an evident preference is given to the study of the special legal aspect of the law operation, i.e. its quality nature, for a long time. And it has already been mentioned to be correct to certain limits. One is to remember that the so-called «general conditions» should not overshadow the specific historical, social, legal, territorial aspects. Among other matters, the methodological prerequisite for analyzing the problem should be the study of the specific conditions of a particular socio-historical era, a particular society. From this point of consideration, the law appears as one of the components of the social system, which does not have an isolated separate existence and is determined by systemic properties. It is the social system that determines, in all its constituent elements, their social nature and properties, and it allows attributing them to a historically determined social res integria.

Here, the legal norm efficiency, if included in the entire set of social variables of a given system, is a systemic effect, a result of the functioning of the social system as a whole. Therefore, the concrete historical foundations of law are not purely external to study its efficiency. It seems that without them it is impossible to resolve fully the issue of the goals, purpose, essence of the legal system and its individual elements, because they all have a social nature and are set by society at large. Consequently, out of concrete historical conditions, one cannot judge the results to which the normative prescriptions have led. Furthermore, out of concrete historical conditions, one cannot judge the legitimacy of law too.

Thus, when a law is recognized as a social phenomenon, one should not be limited only by the fact of its social origin and consider that further a law, having separated from its source – the social entire, begins to exist and function, be effective or ineffective, independently or relatively apart.

The process of social dependence of law does not terminate in the act of its genesis. Society continuously «generates» law. Law is constantly transforming in the course of the historical development of society. It is important to note that the process of transformation of the law social nature, its content and social functions is not necessarily accompanied by changes in the form of its expression, including the verbal expressions of the law formulations. The latter often coincide even in different social formations. For instance, the criminal law prohibition, the rules of contract law and etc., coinciding in many respects from linguistic point of view, but have different, often opposite social meaning, in a historical cut. Consequently, the social approach, which is equivalent in this case to the systemic one, should be understood more broadly and become a method not only of the general theory of law, in which it is currently being developed, but also of sectoral disciplines. The socio-structural (sociological) approach acquires particular importance in the field of constitutional law and, which is extremely important to emphasize, in the context of the process of constitutionalization of the national legal system branches[2].

To clarify and to gain a better understanding of the hierarchical relations between different social, intra-system phenomena, sometimes private cases of subject-object relations are considered. This takes place when relationship between law and other social institutions are negotiated.

To wit, in accordance with two most important aspects of the qualitative determination of law (specific and functional), its action can also be considered at two levels as two interrelated subject-object relations: «society – law» and «law – individual». In this respect, the first should characterize the specific qualities of the action of law, to a greater extent, and the second functional qualities.

From a philosophical point of view, there are several points that make the consideration of these pairs of relations especially interesting in terms of social approach implementation in the study of law efficiency problem.

Firstly, the subject-object relation has an explicit historical nature, which makes it possible to gain a better understanding of the specific features of the law functioning.

Secondly, it always shows the oppositional correlation of the «subject» and «object» categories, through which they mutually determine each other. In this connection, it is easier to reveal the source of the relation, in this case – the development of law, especially within the same socio-historical type.

Hence, thirdly, it follows that the parties of a given relation do not have a fixed attachment to certain phenomena so that one can say: «law is always a subject», and «society is always an object». The same phenomenon in a developing relation can be both a subject and an object. The role of the parties is always historically changeable in the relation researched. Even Hegel noted that «... it is wrong to consider subjectivity and objectivity as a kind of scientific and abstract opposition. Both are quite dialectical.»[3] Society determines law, its content and functions, and in this sense the legal system is an object in relation to the social system. Law influences and regulates social relations, and in this sense it is a subject in relation to society.

It should be borne in mind that the parties to the relationship «society – law» are active to varying degrees. In certain historical conditions, law becomes such an active force that it turns into a subject which is able to transform an object (social relations) in accordance with its fundamental properties. It takes place when the social content of legal forms concisely begins to express the essence of the entire socio-economic system, their action coincides with the direction of objective laws actionin the development of the given system. This coincidence explains such a high efficiency of law in such historical situations, which is directly related to the characteristics of its legitimacy.

In response, the «law-individual» relation is only a specific manifestation of the «society-individual» relation. The interaction of law and the individual is always carried out within the framework of the subject-object relation, where the

[2] Bondar, N. S. Judicial Constitutionalism: Theory and Practice: monograph, 2nd ed., Rev. M.: Norma: INFRA-M, 2015.
[3] Hegel, G. W. F. Encyclopedia of Philosophical Sciences.Vol. 6. M., 1977.

society-subject is represented by one of its most important institutions -the law. Sociology of law emphasizes that in the case of direct contact of an individual with a legal prescription, his actions are primarily determined not only by law, but by the body of social conditions in which he is and his social status. Law is only one of the components of the whole complex of forces affecting the individual.

The logic of scientific analysis prescribes a further transition from general theoretical reflections on the factors of the law efficiency as a special complex social phenomenon in general to the study of the factors of the legislative activity efficiency and its product – the legal system.

The law efficiency (legislation) can be investigated only to the extent of the efficiency problem of the law preparation and adoption process. In other words, the efficiency of legislation largely depends on the law-making process. In these terms, consideration of the law efficiency factors should begin with a study of the preparation and adoption process.

The legislative process is a type of legal process with all its characteristics.

The legal process is a unity of material (factual) and cognitive (informational) activities, as well as the set of rules regulating this activity. Although there is not and cannot be equality between them, it is possible and necessary to ensue to it. In terms of content (and cognition), the stage of the law act development is of high importance. The quality of the law largely depends on how the preparatory work is carried out. However, from the legislation governing the law-making process perspective, it does not matter in most cases (except, for example, the development of the budget) who develops the draft law, where, and how it is developed.

In this case, it is more important (from a formal point of view) that it is introduced to the legislature by a competent entity and in accordance with the established procedure. Further, the legal form of passing the law act through the appropriate authorities contributes to the rejection of low-quality projects or their correction.

Thus, we can state the discrepancy between the legislative process[4] (which is understood in the present context as the activity of the legislative body, regulated by the norms of law, i.e. from a formal legal point of view) and law-making (which is understood as the cognitive, informational activity of the legislative body and other subjects, i.e. from a substantive point of view).

The legal fact and, accordingly, the point from which the legislative process (formal) begins is the legislative initiative, i.e. the introduction of a ready draft law to the legislative body. Thereat, the right of legislative initiative since the formation of parliamentarism belongs to the legislator[5] (along with other subjects).

Legislative (meaningful – information and cognitive) activity begins with the awareness of the problem and the possibility of solving it by adopting a new law or canceling (changing) the old one. This preliminary stage is a subsystem of social processes preceding the beginning of the official process. It includes collecting information on behalf of an official body and making recommendations based on the information received regarding the nature and content of a particular decision.

Based on the foregoing, it seems reasonable to solve the problem of correlation between the formal and substantive aspects of the legislative process, proposed by Korkunov. He wrote: «With regard to the legislative initiative, it is necessary to distinguish between the actual initiation of legislative questions and the actual right to initiate. The right to initiate, like any right, presupposes a corresponding obligation. The right of legislation initiative corresponds to the obligation of discussing the initiated legislative issue. The right to initiate legislation as a special, independent right belongs to the one who can demand that the legislative question raised by him be discussed by the legislative institution»[6].

From a substantive point of view, the preparation of a draft law in general is the objectification of law. This means cognitive activity aimed at identifying law in real social relations. In our opinion, law is a moment, a side of social relations, which are formed objectively and at the same time spontaneously. Therefore, the drafter of the law is to discover the «legal component» in real-life, the legal nature of factors (phenomena, processes), sporadically arising in social reality, that are objectively require special legal influence (legal normative regulation).

However, the author of the draft law can and should anticipate possible trends in changing social life and, if possible, anticipate them by adopting an appropriate normative act. Not any of them will enter the nature of social relations due to the incompleteness and probabilistic nature of the forecasts. But such attempts have been made, are being made and will be made in the future.

The legal criterion for effective law-making (and, in general, legislative) activity is the stable reproduction (functioning) of the state as an integral organism. In this account, bills should take into account not only the trends of political, economic, and socio-cultural development of the country but also its specific features. One should talk about the constitutional identity of a particular national legal system in a broader sense. The problem of constitutional identity is directly related to the content of the public order foundations concept. It correlates to the content of another category of constitutional law – the foundations of the constitutional system.

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4 We deliberately do not consider the issue of a referendum as a form of law-making for the purposes of this study.

5 Gradovsky, A. D. General State Law. Lectures. SPb., 1885. Note that Gradovsky defines the right of legislative initiative as «the right to raise the issue of the need to issue a new law, to cancel, modify or supplement an existing one» (Ibid.). However, he does not write anything about who is entrusted with the solution of this issue, who prepares the bill, etc. The «raising of the question» is followed by «discussion of the draft law.» P.309.

6 Korkunov, L. M. Russian State Law .Ed. 6th.SPb., 1990. Vol. 2.

Modern legal science has yet to synthesize the understanding of the relationship between the categorical triad: constitutional identity – the basis of public order – the basis of the constitutional system, both at its theoretical level and in the sectoral section. The basis of public order and the basis of the constitutional system were legalized in the text of the Constitution of the Russian Federation (Chapter 1), as well as in organic legislation (see, for example, Article 104.6 of the Federal Law Committee «On the Constitutional Court of the Russian Federation»)[7].

Let us consider the planning of law-making activity in detail. Such planning is an attempt to give this activity a scientific basis and provide reliable guidelines for legislative work. Without a clear program that provides specific guidelines for law-making, chaos is inevitable in the work of legislative bodies, as well as ф need to issue an act from «momentary» circumstances, and unjustified duplication, leading to a weakening of intra-system connections in legislation, which ultimately entails inefficiency of legislation. The plans and programs of law-making work allow to apply an integrated approach to the legal regulation of public relations with the allocation of its main directions that depend on social needs, allow more rational organization of work on the preparation of draft laws (strengthen control over the timing of the preparation of draft laws, ensure coordination of the activities of the bodies carrying out their preparation, conduct the necessary research with greater efficiency for the legislative process).

Law-making plans and programs should be drawn up systematically. Thereat, they can be either operational, i.e. for one year only, or long-term. It is advisable to correlate long-term programs with the functioning time period of the electoral legislation. Within such a long-term plan, it is logical to break down draft laws by year or into priority and subsequent ones. Strategic plans for a longer term are permissible. However, such a plan should not be regarded as a normative directive, it is only a model.

In our view, the structure of the long-term plan should reflect the main objects of the legislative regulation. And the legislative regulation should reflect the main aspects of society. First of all, the quality of legislation depends on who is the author the draft law (if not mentioning the influence of the political conjuncture on law-making process). Therefore, a fundamentally important issue of the law-making work plan is to determine the entity responsible for the project work.

In most cases the opportunity to solve this problem is given to the initiative group, so they or any other person can offer a draft law, what is correct in our opinion. However, before becoming a legislative initiative and being introduced to the legislative body by a subject, such a project must undergo an expert review.

In our opinion, it is practicable to entrust the development of draft laws to professionals, scientists and practicing lawyers, as well as practitioners in the area of public relations that is the subject of the draft law regulation (special legal and specialized expertise respectively) in order to increase efficiency. This can be realized by temporary expert groups that cease their activities at the end of the work. However, due to the legislative process as a permanent activity of the legislative body, it would be appropriate to organize permanent research teams in the form of legislative institutions. The Institute of Legislation and Comparative Law under the Government of the Russian Federation is an example of a very successful long-term effective functioning institution. The institute is able to carry out most of the design work and attract the necessary competent specialists for the preparation or examination of any draft law.

Having considered the preparatory subsystem of the legislative process, let us proceed to the analysis of legislative body activities for the laws' adoption.

The procedural stage is the structural element of the legal process. It is worth considering the legislative process through an analysis of its stages.

In etymological dictionaries a stage is traditionally defined as a period, a certain stage, stage, phase of development of something. Hence the stage of the legal process (including the legislative one) is its spatial-temporal, dynamic characteristics. It is expressed in the totality of procedural legal relations, which are united by the immediate goal and established law, with the help of case movement procedure.

The stages of the legislative process have undergone minor changes since the inception of parliamentarism. Gradovsky specified the following aspects of legislation: a) initiative (raising the question of the need to issue a new law, to cancel, modify or supplement an existing one); b) discussion of draft laws, including the possibility of amendments; c) final vote; d) approval of the draft law – the sanction of the royal power, which implies the right of veto[8]. Korkunov identified five stages: 1) initiation; 2) discussion; 3) approval; 4) appeal to execution; 5) disclosure[9]. Taking this into account, it seems appropriate to highlight the following procedural stages: 1) legislative initiative; 2) discussion of the draft law; 3) adoption of a law; 4) approval of the law and its official publication (promulgation).

The mechanisms of the legislative process create very important procedural guarantees of legislations efficiency. At first, they may seem too complicated and formalized. However, the more complicated the laws adopting process, the more likely it is to adopt high-quality, effective regulatory legal acts.

The provided general theoretical foundations of the legislation efficiency indicate the extreme complexity of this problem and it is not possible to separate the «legal component» from the totality of social relations. This is due to the fact that law is

[7] On the Constitutional Court of the Russian Federation: Federal Constitutional Law of 21.07.1994 No. 1-FCL (as revised on 09.11.2020) // Russian Federation legislative corpus dated November 16, 2020 No. No. 46, Art. 196.

[8] Gradovsky, A. D. General State Law. Lectures. SPb., 1885.

[9] Korkunov, L. M. Russian State Law. Ed. 6th. SPb., 1990. Vol. 2.

only a moment, a side of society, and a moment or a side, in fact, of all social relations: economic, political, ideological, and socio-cultural. Therefore, it is impossible to render an image of society in the form of its main spheres located in a row: the spheres of the economy, the sphere of politics, and the legal sphere. All of them are closely intertwined, interact and mutually condition each other.

From there, all spheres of society more or less influence on the final result – the state of society. And even the most complex comparative analysis is not able to show how this final result is influenced by legislation, since it is abstracted (which cannot be achieved in real life) from the influence of other incidental factors. One should note that a quantitative measurement of the society state is a separate problem. Without this factor the problem of the legislation efficiency also cannot be positively resolved.

The second problem worth to be mentioned in this context is the intersection of the federation legislation and the subject of the federation in a state with a federal form of territorial structure[10]. Indeed, what has changed the economic situation in a particular region to a greater extent: the adoption of a new Civil Code at the federal level or preferential taxation of small businesses for the level of a constituent entity of the federation? It is hard to answer such questions. For the successful resolution of these problems, the normative consolidation and especially the practical implementation of the principles delineating the legislative competence of the federation and the subjects of the federation are of great importance.

As already noted, it is extremely difficult to isolate the influence of legislation on the state of society. The theory of criminal law and the criminology turned out to be the most «advanced» of the legal disciplines in this sense. Within these disciplines, an indicative number of researches has been conducted on the study of the preventive effect of criminal legislation. However, legal science currently does not quite have recommendations that fully reveal the optimal criteria for the adoption of criminal laws, even in these disciplines.

Let us turn to the actual factors affecting the efficiency of legislation. They can be classified into internal factors inherent in legislation and factors external to the system of legislation.

Internal factors will be studied first. These include the correct choice of the range of social relations subject to special legal impact; determination of the legal regulation purpose; application of the systematic approach principles; the optimality of the means and methods of legal regulation (permissible, permissive or mixed types, depending on the legal nature of the public relations subject to legal influence); selection of an adequate form of a normative act; adequate timing of administration appropriate regulation; following the rules of legislative technique and others.

Let us begin with consideration of legislative technique rules as the most important factor in the legislation efficiency. These rules constitute the rules of the legislative process and most directly affect the quality of the adopted laws. To state once again: the more complicated the legislative procedure, the greater the likelihood of effective legislation. Particular attention should be paid to the procedure for expert review of draft laws.

The correct choice of the range of social relations, which are subject to legal regulation from a substantive point of view, is no less important. In this case, the objects of legislative regulation should be the main spheres of social life. In these spheres (politics, economics, culture, etc.), the most fundamental, socially significant relations, affecting primarily the legal status of the individual, should be attributed to legislative regulation.

It is important to avoid excessive normative regulation of the relevant social relations, disproportionate legalization of social phenomena and processes, personal and collective behavior. All the more, the intrusion of positive law into a sphere that is legally indifferent, characterized by the ability of self-regulation by non-legal mechanisms of social regulation, is inadmissible.

It is fundamentally important to take into account the economic, geographical, sociocultural and other characteristics of society when determining the objects of legislative regulation. To identify them and objectify them in the form of a law, it is necessary to involve expert experts. In this case, not recording (or not enough recording) of certain public relations that objectively need legal mediation in determining the scope of legal regulation, or, conversely, its extension to relations that do not require appropriate legal impact, can lead to a significant decrease in the law efficiency and consequently its legitimacy.

It is quite important to establish the goal of legislative impact correctly. This is due to the fact that legislative activity is purposeful by its nature. Therefore, law-making begins with the awareness of the problem, which is concretized in the goal or the desired state of the object, where this problem is overcome. The operationalization of such a goal and its translation into legal language are the most essential aspects.

The factor of means and methods of legislative regulation is directly adjacent to the goal factor. It is well known that a goal without real means of achieving it remains nothing more than a good will. In other words, the goal must be achievable. However, the means required for the adoption and, most importantly, the operation of the law, in our opinion, relate to external factors that influence the legislation. In this case, we are talking about legal means, i.e. methods of legal regulation. This requirement (the factor of the legislation efficiency) is in agreement of the adopted law with the branch of law to which it belongs. Consequently, the specificity of the legal norms of the law depends on the legal regulation method, and it must correspond to the method of the branch of positive law.

Logically, the next factor in the legislation efficiency is its consistency. The principle of consistency presupposes both the internal consistency of the law and its consistency with the legislative system at large.

[10] Sergevnin, S. L. Subject of the Federation: Status and Legislative Activity. SPb.: Publishing House of the Legal Institute, 1999. Pp. 171–210.

The issue of the timeliness of a new regulatory legal act adoption is also important for the efficiency of legislation.

Legislation should follow the dynamics of life. This requirement should not be taken literally and imply a simplified (and then faster) procedure for law adoption. Haste can result in low or insufficient quality of regulations. It is very difficult to achieve the optimal combination of efficiency and thoroughness when passing laws. Ideally, the adopted law should be ahead of the dynamics of social relations and express its tendency. However, the adoption of such laws is an intractable task (especially within the modern complication of social relations) and therefore the legislation either does not keep pace with the changes in social relations, or, if adopted in a hurry, is of poor quality. This is the reason for the introduction of numerous changes and additions to the existing regulatory legal acts based on the results of law enforcement. And this, accordingly, negatively affects the efficiency of the current regulation and, more generally, on its legitimacy.

The result of the above factors of the legislation efficiency is the establishment of an adequate form of a normative act, i.e. the consolidation of social relations (either already established or still emerging), experiencing the need for legal mediation, in the form of a law. This requires both the correct choice of the object of legislative regulation, and a clear definition of the purpose and means of legal regulation, etc. In general, it can be argued that the right (as a set of naturally formed generally binding social relations, institutionalized in the rule of law) should be expressed in an adequate form of legislation. The efficiency of legislation largely depends on what relations will be enshrined in the law, how this process will proceed.

Now let's move on to considering the external factors of the legislation efficiency. Among them the political and economic situation in society; material (primarily financial) support for the implementation of laws; the legitimacy of legislation and external influence on legislation (the so-called «visual effect») are to be discussed.

The political and economic situation in society is the primary factor that determines the need for the adoption of a new law or amending (repealing) the current regulatory legal act. However, this influence is not direct, but indirect, mediated and reciprocal. The intermediate links mediating the mutual influence of the political and economic state of society and legislation are the awareness of the problem by the political elite and the setting of a goal that translates this problem into a «legal» language, as well as the legitimacy of legislation (the forecast of whether it will a new law be «adopted» [perceived, approved] by the addressees (by the population in general) or not).

This kind of goal is related to the issue of political will and is the subject of political science. Therefore, let us pay attention to the problem of the legitimacy of legislation as a factor of its efficiency. This problem directly affects the question of the mechanisms (tools) for verifying the legitimacy. However, for example, public opinion polls that study the degree of public support for the activities of certain government bodies or certain laws are not entirely correct. It is hardly possible to expect a designedly positive answer from the majority to the question whether you support such and such a law in the field of taxation, for instance.

In addition, no distinction is usually made between a specific state body, personified with specific officials (or the law) and state power (or legislation) as such in the study of legitimacy. But understanding the need for legislative regulation and a critical attitude towards it are not the same things. A critical attitude is not yet a denial of the need in regulation.

Undoubtedly, legislation (and legislators) must justify the existing «credit of confidence». This presupposes the objective (not opportunistic) needs of the population to be mentioned in the legislation.

At the end of the XX century the so-called «visual effect» has become an important factor affecting the legislative process and the efficiency of legislation (although it was outlined much earlier in other countries). It involves the experience borrowing of other legal systems. Indeed, the world, in connection with the processes of globalization and the parallel processes of the interpenetration of legal systems and even legal families' content, has become a single system where a change in one part affects all other subsystems inevitably. However, the influence of other experience and its borrowing has both positive and negative features.

It was believed that there is a single main line of world-historical development for a long time. Europe (the countries of Western Europe) was the first to embark on this path, and all other regions of the world have to follow this path sooner or later. Therefore, it is necessary to borrow the economy, political institutions and the legislation system of Western Europe and become a member of the developed states.

This trend can be observed both at the level of political elites who are trying to pursue a policy of modernization (or Westernization) in their considered developing countries, and at the level of everyday life. The so-called «visual effect» is observed at the «lower» level. This can be noticed when the population of developing countries is not satisfied with its strata position in comparison with the population of the developed countries. Under certain circumstances, it can give rise to reformational or even revolutionary expectations. This state of deprivation pushes the political elite to borrow (even copy) experience of other countries without any critical attitude towards it.

However, as the experience of the XX century has shown, the world has become one, due to large-scale technological breakthroughs, but various regions of the world continue to retain their uniqueness. Therefore, the experience of Western Europe turned out to be of little use for post-Soviet Russia, for example, without serious adjustments. The main criterion for assessing Western legislation should be the Russian legal culture[11]. Foreign normative legal models for developments in the

[11] Sergevnin, S.L. Russian National Legal Consciousness: Some Constitutional and Legal Problems // Journal of Constitutional Justice.2014. No. 5 (41). Pp. 16-23.

field of domestic legislation can be selected very carefully, if necessary, in terms of the naturally-historically formed legal culture of Russian society. Thus, external influence or consideration of other legislative experience can become an important factor in increasing the legislation efficiency, provided that it is used creatively in relation to the given legal system. In other words, comparative studies are a very powerful and effective means of modern legal technological processes, as well as in the field of law-making activity of public authorities and in the field of linear rule-making in the private law sphere. However, when the relevant national subjects use the comparative toolkit, it requires a special balanced, thoughtful and, in a sense, even delicate attitude of use. This remark is especially relevant for powerful political systems and legal order in terms of historical experience.

In conclusion, it should be emphasized that the law efficiency in general and positive law in particular, as a slightly forgotten problem of general theoretical jurisprudence and sociology of law, requires new attention and new approaches to the research paradigm in new social realities. On the one hand, the analysis of the positive law efficiency is of the great interest in its sectoral cross-section. Since the use of modern electronic technologies at this level will be most indicative within the specific sociological research in the field of various legal phenomena and processes. On the other hand, the external component also attracts special attention. Analysis of the normative regulation efficiency in a comparative legal aspect, analysis in the context of the inclusion of national legal systems in the metasystem of the world legal order, analysis of relationship and interaction of the normative regulation efficiency with supranational legal instruments and mechanisms are also of great interest.

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Digital Transformation of Subjective Civil Rights: Problems and Prospects

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ABSTRACT
The article examines the phenomenon of digital transformation of subjective civil rights, which is the most important characteristic of civil turnover in the information society. According to the author, digital transformation is a systemic change in the main features and content of subjective law under the influence of digital technologies, with the help of which new types of property are constructed, namely crypto-currencies, digital rights, tokens, databases, and other virtual objects. The characteristic properties of such objects, first of all, the absence of a material substrate, that is, physical, material expression, make it difficult to characterize them as things, in the traditional meaning of this concept.
However, the needs for the development of civil turnover in the context of the digitalization of the economy make it necessary and inevitable for the participation of various types of digital property as objects of both property and contractual rights. The civil turnover of digital objects becomes possible as a result of endowing the latter with the properties of things or actions, which implies the formation of appropriate legal modes. Since the legal mode, as shown in the work, includes three main elements, namely, objects of rights, subjective civil rights and regulatory means, digital transformation affects all these elements, contributing to their modification.
At the same time, the main attention in the work is paid precisely to subjective civil rights, which, in a situation of underdeveloped regulatory regulation, are the main regulator of digital property turnover. Considering the prospects for the digital transformation of subjective civil rights in the context of the digitalization of civil law and order, the author comes to the conclusion that the processes considered in the work will affect not only the sphere of real rights, but also the personal non-real rights of subjects. The analysis performed allows us to formulate some proposals for improving the current civil legislation, contributing to its further reform.
Keywords: digital objects, crypto-currency, token, legal mode of property, property law, law of obligations, incorporeal things

1. Introduction

One of hallmarks of the modern time is development a digital society, which has long been in the center of focus and actively discussed, since it resulted in dramatic changes in almost all areas of people's life, including those regulated by law. In a broad sense, digital society can be defined as an evolution stage of post-industrial civilization, characterized by accelerated growth of high technologies and their imbedding not only into science, production, education or management, but also into everyday routine life.

Among other things, wide-spread information technologies at the current stage of digital society triggered heated debates in research papers in terms of the very concepts «information» and «digital» society. Thus, most researchers believe that digital society is a synonym or another stage of information society, characterized by digitalization of social processes and a high level of digital technologies development. Meanwhile, some scholars, including M. Castells, distinguish between these concepts and define digital society as a special, «post-information» type of community, whose members are or can potentially be both human beings and digital organisms with artificial intelligence[1] ... This discussion may presents interest to a lawyer insofar as it contributes to a better understanding of social context that determines development of the system of justice. It is still early days of the issue, although there have been some suggestions to vest legal personality to cybernetic devices[2].

It is generally accepted that the Internet has become an important factor in spread of knowledge and technology. Development of the Internet gave rise to a brand new system of communication and dramatically transformed previously ways of communication. Not only have digital means of communication greatly expanded possibilities of relaying information

[1] See: Corazza, G.E. Organic Creativity for Well-Being in the Post-Informational Society // Europe's Journal of Psychology. 2017. Vol. 13. No. 4. Pp. 599-605.
[2] See: Legal Tech Development Online Conference (St. Petersburg, April 20, 2020). // Theoretical and Applied Law. No. 2 (4). Pp. 100-105. (in Russian and in English).

to an unlimited number of communication parties, thus creating conditions for their maximum interdependence[3]; but they seem to have changed the nature of information itself. For a long time information has been treated as a special kind of reality, different from matter and energy[4], but now we are witnessing transformation of this concept, which is acquiring properties of things, and in some cases of biological objects, as evidenced by the term «digital organism» used by foreign researchers[5].

The above-described trends explain innovations that are developing in the digital society and must be considered in term of digital society. What is meant here is penetration of digital technologies into economic, political and cultural spheres. One of such technologies that has recently become universally-used, is blockchain, originally applied for financial transactions in non-cash settlements in the Bitcoin system[6]. Blockchain has quickly turned into a basic model used in various sectors of economy thanks to its characteristics, mostly, due to decentralization and compressibility, which allow operations with big data, minimizing accidental or intentional damage or loss of information. However, experience shows that this technology does not provide absolute security and can be vulnerable, as evidenced by recent crypto-currency scam, the largest in the history of electronic payments[7]. The lessons of this large-scale scan warn us against being over-optimistic about digital technologies and highlight new challenges of the information age.

Despite the discussed weak points, it can be argued that the model has an important advantage – it can include virtual phenomena (in particular, crypto-currency), as if they were real, thereby opening ways for entrepreneurs and businesses to influence such phenomena. Combined effect of decentralization and self-development of blockchain technology make it a perfect tool to use in the potential instability naturally inherent in financial and, nowadays, other markets[8]. It is clear that under current circumstances unpredictability and spontaneity have ceased to be characteristics of financial markets alone, rather these features are displayed everywhere where human factor is concerned, ranging from corporate management to voting procedure at polling stations, from education to medicine. This led to the fact that blockchain and other digital models are in great demand in various areas.

It is obvious that expectations associated with digital technologies are exaggerated. Meanwhile, as it was noted, any social transformation (including digital transformation) must be considered from in the light of principle of uncertainty that makes a background of all social processes[9]. The key idea behind this principle is that any influence on a social system not only increases a degree of its order (decreases its entropy), but also increases uncertainty of the whole system, giving rise to unpredictable and not always positive consequences.

Such consequences demand new, more complex effects, which in the long run generate new uncertainty that influences operations of the system in the altered conditions[10]. For instance, large-scale measures around the globe taken to limit social contacts to stop spreading SARS-CoV-2 coronavirus, have an indirect, but very important consequence: spread of digital means of communication, which, in turn, lead to a total transformation of social reality.

The arguments above also relate to law, which is known to be a universal regulator of social relations. Therefore, the changes discussed are highly likely to be displayed in this sphere. It is not an overstatement to say that global trends in development of the system of justice in the digital age speak for a new stage in evolution of the system of justice, characterized by changes at all levels. First of all, we refer to new virtual objects of legal relations that contribute to a digital transformation of the nature of subjective rights that are the bedrock of such relations.

In terms of legal regulation, digital transformation of subjective rights results in structural changes of the legal system and the development of new institutions in both private and public law. Some scholars suggest considering the whole corpus

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[3] See: McLuhan M. The Gutenberg Galaxy: the Making of a Tipographic Man [Galaktika Gutenberga: stanovlenie cheloveka pechatayushchego]. M.: Academic Project; Foundation «Mir» [Akademicheskii Proekt; Fond «Mir»], 2005. 496 p. (transl. from English) (in Russian). P. 66.

[4] See: Viner, N. Cybernetics, or Control and Communication in the Animal and the Machine [Kibernetika, ili upravlenie i svyaz' v zhivotnom i mashine]. Ed. 2nd. M.: Soviet radio [Sovetskoe radio], 1968. 325 p. (in Russian).

[5] See: Pargellis, A.N. The Spontaneous Generation of Digital «Life» // Physica D: Nonlinear Phenomena. 1996. Vol. 91. No. 1-2. Pp. 86-96; Wilke, C.O., et al. Evolution of Digital Organisms at High Mutation Rates Leads to Survival of the Flattest // Nature. 2001. Vol. 412. Pp. 331-333; Wilke, C.O., Adami, C. The Biology of Digital Organisms // Trends in Ecology and Evolution. 2002. Vol. 17. Pp. 528-532, etc.

[6] See: Swan M. Blockchain: Blueprint for a New Economy. Oxford: O'Reilly Media, 2015. P. 12 f.

[7] See: Major US Twitter Accounts Hacked in Bitcoin Scam [Online source]. URL: https://www.bbc.com/ news/technology-53425822 (date of access: 25.02.2021).

[8] Mandelbrot, B., Hudson, R.L. The Misbehavior of Markets: a Fractal Revolution in Finance [(Ne)poslushnye rynki: fraktal'naya revolyutsiya v finansakh]. M.: Publishing House «Williams» [ID «Vil'yams»], 2006. 400 p. (transl. from English). (in Russian). P. 151 et seq.

[9] See in more detail: Chestnov, I.L. Legal Communication in the Context of Postclassical Epistemology [Pravovaya kommunikatsiya v kontekste postklassicheskoi ehpistemologii] // News of Higher Educational Institutions. Jurisprudence [Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie.]. 2014. No. 5 (136). Pp. 31-41. (in Russian) P. 33.

[10] Advocates of institutional economic theory argue that uncertainty of external factors and internal state is an inherent characteristic of social system that gave rise to the term «new normal» characterizing post-crisis conditions. See, for example: El-Erlan M.A. Navigating the New Normal in Industrial Countries. Washington: Per Jacobsson Foundation, 2010; Cohen S.I. The Russian Economy: New Normal, Past Imbalances, Future Globalization // Journal Institutional Studies. 2018. Vol. 10.No. 1. P. 25 ff; Hasija D., Liou R.-S., Ellstrand A. Navigating the New Normal: Political Affinity and Multinationals' Post-Acquisition Performance [Online source] // Journal of Management Studies. 2019.57(3). URL: https://www.researchgate.net/publication/337792251_Navigating_the_New_Normal_Political_Affinity_and_Multi-nationals'_Post-Acquisition_Performance (date of access: 25.02.2021).

of those institutions as a new branch of the current Russian legislation[11]. So, digitalization, beyond a reasonable doubt, proves an idea that previously could be justified only in a diachronic retrospective. The point is that any global evolutionary changes in the system of justice first promote occurrence of new subjective rights (or transform existing rights by filling them with new content), which are later classified and captured at the normative level.

The aforesaid explains relevance of the issue of social digital transformation of society in civil jurisprudence, and the necessity to consider key trends in digitalization of civil law and civil commerce, as discussed further on in this article. In view of the above, the goal of this study is to trace how new objects of social reality (namely, virtual, digital objects) change legal mode of their commercial turnover. Moreover, those changes, initially displaying themselves in transformation of the nature and essence of subjective civil rights, which is of greatest interest to us, are further captured in the civil law system, that is, at the normative level.

To achieve the goal, the article solves following objectives:

1) to consider new types of objects of civil rights, namely digital rights and other digital assets, their physical and legal nature;

2) to study legal mode of civil commerce of digital assets, including differences between the legal mode of digital assets and that of «traditional» property benefits;

3) to analyze the nature and main characteristics of transformation of subjective civil rights, where digital assets serve as objects of rights;

4) to attempt to consider main trends in development of the civil law in terms of development of an information (digital) society.

It seems that solution of these issues promotes academic interest, since it allows us confirm the hypothesis, which states that evolution of legal regulation both in synchronous and diachronous aspects includes the following consecutive stages: emergence of new social benefits, their mediation in the form legal claims and subjective rights of the parties, which entails development of appropriate legal institutions, the latter, in turn, leading to restructuring of the whole system of objective law.

2. Objects of civil rights in terms of digitalization of property turnover

Challenges of the digital age, among other things, demand legislative solutions, defining the range of issues currently facing the law. The most important task still seems to be improvement of mechanisms for exercising and protection of subjective rights in social uncertainty. Critical nature of this issue is highlighted by V.D. Zorkin, who argues that, «big data and artificial intelligence open a window of opportunities for the legal community, but at the same time pose a threat of losing the very spirit of law and its inseparable humanistic focus, taking into account that law is, primarily, a kind of social norms, meaning, first of all, rights of man as a member of society»[12].

Since economics has been especially deeply affected by digitalization, it is safe to say that the issues considered herein have a great scientific and practical relevance specifically for civil law. Virtualization of social phenomena triggers development of new objects of rights, which requires effective ensuring of their civil turnover. To support this idea, we can refer to Article 141.1 of the Civil Code of the Russian Federation[13], introduced by Federal Law No. 34-FZ of March 18, 2019[14], which introduced digital rights as a new object of rights; the law identifies them as «obligation rights and other rights named as such in law whose content and terms of exercising are defined in compliance with the rules of an information system having the features established by law» [15]

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[11] See: Golovkin, R.B., Amosova O.S. «Digital Rights» and «Digital Law» in the Mechanisms of Digitalization of the Economy and Public Administration [«Tsifrovye prava» i «tsifrovoe pravo» v mekhanizmakh tsifrovizatsii ehkonomiki i gosudarstvennogo upravleniya]. Bulletin of the Vladimir Law Institute [Vestnik Vladimirskogo yuridicheskogo instituta]. 2019. No. 2 (51). Pp. 163-166. (in Russian). P. 166.

[12] Zorkin, V. D. The Law of the Future in the Era of Numbers: Individual Freedom or a Strong State? [Pravo budushchego v ehpokhu tsifr: Individual'naya svoboda ili sil'noe gosudarstvo?] // Russian Newspaper [Rossiiskaya gazeta]. 2020. Dated 15.04.2020. No. 83 (8137) [Online source]. URL: https://rg.ru/2020/04/15/zorkin- pravo-budushchego-eto-te-zhe-vechnye-cennosti-svobody-i-spravedlivosti.html (Accedd date: 25.02.2021). (in Russian).

[13] Civil Code of the Russian Federation. Part one // CC RF. 1994. No.32. Article 3301; 2019. No.51. Part 1. Article7482.

[14] Civil Code of the Russian Federation. 2019. No. 12. Article 1224.

[15] See in more detail: Novoselova, L.A. On the Legal Nature of Bitcoin [O pravovoi prirode bitkoina] // Business and Law [Khozyaistvo i pravo]. 2017. No. 9. Pp. 3-15. (in Russian) Pp. 3-12; Efimova, L.G. Cryptocurrencies as an Object of Civil Law [Kriptovalyuty kak ob»ekt grazhdanskogo prava] // Business and Law [Khozyaistvo i pravo]. 2019. No. 4. Pp. 17-25; 24. Egorova, M.A., Efimova, M.G. The Concept of Cryptocurrency in the Context of Improvement of the Russian Legislation [Ponyatie kriptovalyut v kontekste sovershenstvovaniya rossiiskogo zakonodatel'stva] // Lex russica. No. 7. Pp. 130-140. (in Russian); El-Erlan, M.A. Navigating the New Normal in Industrial Countries. Washington: Per Jacobsson Foundation, 2010. 40 p Pp. 130-140; Yegorova, M.A., Kozhevina, O.V. The Role of a Cryptocurrency in the System of Objects of Civil Law Rights // Actual Problems of Russian Law [Aktual'nye problemy rossiiskogo prava]. 2020. No. 1. Pp. 81-91. (in Russian); Arslanov, K.M. History, Modern Status and Development Prospects of Cryptocurrency: Russian and Foreign Legal Experience [Istoriya, sovremennoe sostoyanie i perspektivy razvitiya kriptovalyuty: rossiiskii i inostrannyi pravovoi opyt] // Civil Law [Grazhdanskoe pravo]. 2020. No. 1. Pp. 24-27. (in Russian); Lorenz, D.V. Digital Rights in Real Estate: Legal Nature and Methods of Protection [Tsifrovye prava v sfere nedvizhimosti: yuridicheskaya priroda i sposoby zashchity] // Russian Justitia [Rossiiskaya yustitsiya]. 2020. No. 2. Pp. 57-60. (in Russian).

However, it is obvious that the corpus of digital objects together with relations arising out of them, is far from being exhausted (and, in our opinion, cannot even be clarified) by this definition, which only generally outlines the agenda of legal regulation. There are some issues to be made more certain, firstly, the nature of digital rights, chiefly, the issue of whether they are proprietary or contractual rights; secondly, the legal and actual nature of the called «digital assets», «digital property», etc. as they are called in the current legislation, including their physical parameters, property value, as well as other characteristics, which must be specially studies, since without clarity in this issue it is impossible to determine the place of digital assets in the system of objects of civil rights.

Legislative innovations in this filed can be found in the Federal Law No. 252-FZ of July 31, 2020 «On digital financial assets, digital currency and on amendments to certain legislative acts of the Russian Federation[16], which came into force and effect on January 1, 2021. In accordance with Article 2 of the Law, digital rights include monetary claims, rights exercising under equity securities, right to participate in the capital of a non-public joint stock company, right to demand assignment of equity securities, which can only be issued, registered and circulated by making (amending) entries in an information system of a distributed register, as well as other information systems.

So, the civil legislation of the Russian Federation approves that treats digital rights as those having an obligatory nature. In other words, in terms of legislation, digital objects are special actions performed by users in the virtual space (namely, making entries in the information system), while digital rights are the rights of claim performance of such actions. This conclusion can be confirmed by Article 8 of the Federal Law No. 259-FZ of 02.08.2019 «On attracting investments using investment platforms and on amending certain legislative acts of the Russian Federation»[17], that classifies utilitarian digital rights into three groups, namely the right to demand assignment of an item, the right to demand assignment of exclusive rights to the intellectual deliverables and (or) the rights to use the intellectual deliverables and the right to demand performance of work and (or) provision of services.

Digital rights have become a matter of focus in the judicial practice, which, despite very few decisions, shows that relations in this area not only exist, but also cause collisions between civil parties and require settling. The act worth mentioning here is the Resolution No. 01-AP-5933/18 of the First Arbitration Court of Appeal dated 13.03.2020 in case No. A43-34718/2017. We believe that this resolution shows no well-established understanding in terms of the nature of transactions with digital objects, namely bitcoin, with the party to the case referring to the property nature thereof, and the rights to these objects. Confusion and ambiguity of the concept made it difficult to prove that the crypto-currency belongs to one of the parties in the transaction. Another source of difficulties was no official status of crypto-currencies, which allowed the court to classify bitcoin and other crypto-currencies as «a special kind of monetary surrogates»[18].

The definition of crypto-currencies as monetary surrogates is also used by the courts of first instance, for example, in the decision No. 2-10560/2017 M-7339/2017 of Primorsky District Court of St. Petersburg dated October 13, 2017 in case No. 2-10560/2017[19]. This decision, taken before the aforementioned Federal Law No. 34-FZ has entered into force and effect, speaks about very negative attitude of the judiciary towards crypto-currencies, characterized as growth factors of the shadow economy, which, might have been caused a literal interpretation of the term with the prefix «crypto-» (from the ancient Greek κρυπτός, meaning «concealed», «hidden», «secret»). Since 2014 the same position has been taken by the Central Bank of the Russian Federation, as directly evidenced from the regulations of the Central Bank dated 04.09.2017 «On the use of private «virtual currencies» (crypto-currencies)»[20].

As opposed to it, the European Central Bank recognizes crypto-currencies (including bitcoin) as electronic money, issued privately and used as instrument of payment by members of the virtual community[21]. Foreign legislation contains norms regulating turnover of crypto-currencies, as evidenced by the Directive No. 2009/110/EC of the European Parliament and the Council of the European Union of 16.09.2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC[22], Article 4A of the

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16 Civil Code of the Russian Federation. 2020. No. 31. Part 1. Article 5018.

17 Civil Code of the Russian Federation. 2019. No. 31. Article 4418; 2020. No. 30. Article 4738.

18 See: [Online source]. URL: http://www.consultant.ru/cons/cgi/online.cgi?req=doc&cacheid=57D5893D3DFC1F1B5B1A0867AB15E328&mode=backrefs&SORTTYPE=0&BASENODE=256012&ts=1370159404060728827&base=RAPS001&n=101754&md=FBFC807F8B44CA63DBD2C3AE908F50A9#1ig2jpn3p3z (date of access: 25.02.2021).

19 See: [Online source]. URL: https://sudact.ru/regular/doc/EsGMojswkf5K/?regular-txt=&regular-case_doc=2-10560%2F2017&regular-lawchunkinfo=&regulardate_from=13.11.2017&regulardate_to=&regularworkflow_stage==&&reg0%D1%80%D0%B8%D0%BC%D0%BE%D1%80%D1%81%D0%BA%D0%B8%D0%B9+%D1%80%D0%B0%D0%B9%D0%BE%D0%BD%D0%BD%D1%8B%D0%B9+%D1%81%D1%83%D0%B4+%28%D0%93%D0%BE%D1%80%D0%BE%D0%B4+%D0%A1%D0%B0%D0%BD%D0%BA%D1%82%D0%9F%D0%B5%D1%82%D0%B5%D1%80%D0%B1%D1%83%D1%80%D0%B3%29&regular-judge=&_=1594189666199 (date of access:25.02.2021).

20 Bulletin of the Bank of Russia. 2017. No. 80 (1914). P. 3

21 Virtual Currency Schemes. European Central Bank Report, Oct. 2012 [Online source]. URL: http://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf (date of access: 21.02.2021). For more details, see: Abramova, E.N. Discussions about the Legal Nature of Cryptocurrency [Diskussii o pravovoi prirode kriptovalyuty] // Law and modern economics. Sat. materials of the I International Scientific and Practical Conference of the Faculty of Law of St. Petersburg State University of Economics [Pravo i sovremennaya ehkonomika. Sb. materialov I Mezhdunarodnoi nauchno-prakticheskoi konferentsii yuridicheskogo fakul'teta SPBGEHU], April 5, 2018 / under scientific. ed. N.A. Krainova. SPb.: Publishing house of SPbSUE [Izd-vo SPBGEU], 2018. Pp. 51-60. (in Russian).P. 54.

22 See: [Online source]. URL: https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:32015L2366 (date of access: 21.02.2021).

Uniform Commercial Code of the United States or article 200.2 title 23 of the official New York Codes, Rules and Regulations (23 CRR-NY 200.2)[23].

The facts above show systemic difficulties faced when we attempt to interpret the concept of digital objects or identify their legal mode, which is treated as a combination of legal regulation tools typical of a certain industry that determine the ownership and the turnover procedure of digital objects as a special kind of property. Thus, the main components of the legal mode include: 1) objects of rights, whose special nature determines their ability of turnover (Article. 129 of the Civil Code of the Russian Federation), and persons whom these objects may belong to under private property or other real rights; 2) subjective rights determining the limits of various transactions with the objects; 3) legal norms governing turnover of property and ensuring security and protection of subjective rights[24].

Given that the normative regulation of property relations arising out of digital objects is still underdeveloped in the Russian Federation, it becomes obvious that currently prospects for legal regulation are determined rather by the doctrinal consideration of the digital objects and subjective rights to them than by provisions of the law. The value of this study, among other things, is based on fact that is studies a model new to the modern legal order, where subjective rights generated by general social development, precede their capture in the normative legislation. At first glance, such model contradicts doctrinal provisions, first of all, to the generally accepted concept of the mechanism of civil law regulation[25].

The idea behind a mechanistic approach to civil law regulation is that a condition for emergence of legal relations (hence, subjective rights and obligations that make their essence) is the existing norm of law whose regulatory effect transforms actual relations into legal ones[26]. This idea has certain advantages, however, in the civil law the traditional scheme of legal regulation shows its abstract and incomplete nature, ignoring situations when subjective rights and obligations of parties to legal relations arise in the absence of a norm and become the only regulator of behavior in this particular case.

These situations are becoming especially common in the rapid development of civil relations, emergence of new types of property and personal non-property relations, typical for a digital society, turning subjective rights and obligations into the main source of legislative rules in a digital society. It is worth noting that lawmaking through the generalization and classification of certain life circumstances and subjective rights associated therewith was very widespread in the diachronic retrospective. It can be proved by works of the Roman lawyers devoted not to analysis of general rules but rather to analysis to real situations (incidents) from which such rules resulted.

The status of the doctrine as a source of Roman private law contributed to unification of subjective rights and obligations of parties in similar relations, and to development of uniform principles for judicial resolution of disputes between the subjects[27]. In its turn, the doctrine successfully performed a regulatory function even in the absence of generally binding rules of conduct (norms). And despite the fact that currently the doctrine has lost its role as the source of law, historical experience makes us treat it at least, as in a generator of theoretical models that are highly likely get legislative approval in the near future, if not as legal regulations of principally new relations in the current legal order, emerging, among other things, from digital objects.

That is why our close attention should be focused on doctrinal research in digital objects which arise a particular interest given the special nature of this field on the border between technical and social worlds[28]. However, we have to admit that there is no position on this issue described in the research papers, which may be associated with the well-established classification of objects of various subjective rights[29], which in many respects does not meet the digital era. Thus, most of scholars (and,

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[23] See: [Online source]. URL: https://govt.westlaw.com/nycrr/Document/I85908c68253711e598dbff5462aa3db3?ViewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextDaa=(sc.Default) (date of access: 21.02.2021).

[24] For more information, see: Titiyevskiy, A.N. Concept and Structure of Civil Legal Regime of Things from the Point Systems Approach [Ponyatie i sushchnost' pravovogo rezhima veshchei s pozitsii sistemnogo podkhoda] // Bulletin of the Tyumen State University [Vestnik Tyumenskogo gosudarstvennogo universiteta]. 2012. No. 3. Pp. 128-133. (in Russian). P. 130; Khannashi, S. To the Question about the Essence of Civil-Law Regime [K voprosu o sushchnosti grazhdansko- pravovogo rezhima] // State Councilor [Gosudarstvennyi sovetnik]. 2014. No. 4 (8). Pp. 5-7. (in Russian) P. 6

[25] See: Barkov, A.V. Civil-lawful Means in the Mechanism of the Lawful Regulation: Questions of the Methodology [Grazhdansko-pravovye sredstva v mekhanizme pravovogo regulirovaniya] // Law and State: Theory and Practice [Pravo i gosudarstvo: teoriya i praktika]. 2008. No. 5 (41). Pp. 56-59. (in Russian) P. 59; Gruzdev, V.V. The Concept of Civil Law Protection and Its Place in the Mechanism of Civil Law Regulation [Ponyatie grazhdansko-pravovoi zashchity i ee mesto v mekhanizme grazhdansko-pravovogo regulirovaniya] // Law and State: Theory and Practice [Pravo i gosudarstvo: teoriya i praktika]. 2009. No. 5 (53). Pp. 37-40. (in Russian) P. 39; Rodionova, O.M. The Mechanism of Civil Regulation: Composition, Structure, Action [Mekhanizm grazhdansko- pravovogo regulirovaniya: sostav, struktura, deistvie] // Legislation [Zakonodatel'stvo]. 2012. No. 8. Pp. 21-31. (in Russian) P. 21-31.

[26] For more details see: Alekseev, S. S. General Theory of Law [Obshchaya teoriya prava]. In 2 Volumes. Vol. 2. M.: Jurid. lit. [Yurid. lit.], 1982. 360 p. (in Russian), P. 27.

[27] See: M. Kaser Das Urteil als Rechtsquelle im Romischen Recht // Festschrift fur Fritz Schwing / hrsg. von R. Strasser. Wien: Metzger, 1978, P. 126.

[28] That is why importance of interdisciplinary research for obtaining new knowledge was highlighted by many philosophers and methodologists of science, including M.M. Bakhtin, who believed that every science develops on the borders and intersections of traditional subjects, which makes interdisciplinary synthesis viable and productive. See: Bakhtin, M. M. Problem of the Text [Problema teksta] / M.M. Bakhtin. Collected works. T. 5. Works of the 1940s-1960s. [Bakhtin M.M. Sobranie sochinenii. T. 5. Raboty 1940-1960-kh godov] M.: Russian Dictionaries [Russkie slovari], 1997. Pp. 306-326. (in Russian) P. 306.

[29] For more details see: Civil Law. In 4 volumes. Vol. 1: General Part [Grazhdanskoe pravo. V 4 t. T. 1: Obshchaya chast'] / ex. ed. E. A. Sukhanov. M.: Walters Kluvers [Volters Kluvers], 2006. 958 p. (in Russian). P.198

as we could see above, the legislators) consider digital rights and other virtual assets, like works, services and money, to be objects of contractual rights, relying on their having no material form[30], while the objects of law property and other real rights usually include material and, moreover, specific objects[31]. Meanwhile according to L.V. Sannikova and Yu.S. Kharitonova information, being a result of human intellectual activity, is an object of intellectual rights[32], while A.V. Lisachenko believes that digital objects are a special kind of property that does not belong in its pure form to things or actions[33].

It is clear that many doctrinal challenges in identification of the nature of digital rights and other virtual objects originate from scholastic ideas about properties of things in particular, their belonging to the realm of the «material», «certain physical objects», etc. Variety of virtual objects makes us rethink these ideas, not only in terms of philosophy, but legislation, too. Information, though not having material properties, is the object of the world, like other physical items, which ensures its civil turnover, acting as an object of property, including real rights.

In this case, the information structure includes heterogeneous elements that form a message as a single object. These elements are: first, ***data*** – coded information about actual or imaginary events (facts) in the logical space of reality[34]; secondly, ***signal*** – a material data carrier, transmitted over a communication channel; thirdly, ***presentation*** – purely mental reproduction of information in the mind of the sender and recipient of information[35]

Information has important property of partiality, which provides ability to measure information in the message in quantitative units. The measure of information is determined by the Hartley formula: $I = K \log_2 N$, where N is the power of alphabet or the number of characters used in it, K is the message length, and I is the amount of information in bits[36]. Quantitative measure makes each record in the database act, with due technologies, as an object of legally significant actions performed with physical things, including possession, assignments, consumption, identification of ownerships, protection, etc.[37]

So, modern technologies contribute to individualization of transmitted messages and further establishment of subjective rights, including real rights of civil parties. Moreover, characteristics of such objects, even the minimum payment units (satoshi equal to 10^{-8} bitcoins), used in a peer-to-peer payment system, makes it possible to trace its movement from the first transaction to the last, while the parties in such transactions remain as anonymous as possible; that is, essentially de-personified[38]. To put it in a nutshell, in virtual reality, digital property (electronic money, domain names, gaming property, other records in databases) receives its unique individual «attribute».

This process in general matches the tendency discussed by some scholars, i.e. loss of objective properties by material items affected by computer technologies[39]. The owners of digital assets in this capacity remain depersonalized, anonymous, that is, we see reversed relations between objects and subjects in contrast to physical world. Finally, in terms of mental representations of digital objects, objective nature of the latter is out of question. Indeed, if the parties to a legally relevant situation agree that something is an object of transactions, recognized by the whole community, whatever the nature of such object may be, its legal reality will not require further justification.

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30 See, in particular: Vasilevskaya, L.Yu. Token as a New Civil Rights Object: Issues of Legal Classification of Digital Law [Token kak novyi ob»ekt grazhdanskikh prav: problemy yuridicheskoi kvalifikatsii tsifrovogo prava] // Actual Problems of Russian Law [Aktual'nye problemy rossiiskogo prava]. 2019. No. 5 (102). Pp. 111-119. (in Russian). P.115-116

31 See, in particular: Sukhanov, E.A. Property Law in Modern Russia: Several Fundamental Theses [Pravo sobstvennosti v sovremennoi Rossii: neskol'ko printsipial'nykh tezisov] // Russia and the Modern World [Rossiya i sovremennyi mir]. 2001. No. 3 (32). Pp. 106-107. (in Russian); Sklovsky, K.I. Property in Civil Law [Sobstvennost' v grazhdanskom prave]. Ed. 5th, rev. M.: Statut, 2010. P.160 (in Russian)

32 See: Sannikova, L.V., Kharitonova, Yu.S. Legal Essence of New Digital Assets [Pravovaya sushchnost' novykh tsifrovykh aktivov] // Zakon. 2018. No. 9. Pp. 93-95. (in Russian)

33 See: Lisachenko, A.V. Law of Virtual Worlds: New Objects of Civil Rights [Pravo virtual'nykh mirov: novye ob»ekty grazhdanskikh prav] // Russian Juridical Journal [Rossiiskii yuridicheskii zhurnal]. 2014. No. 2. Pp. 106. (in Russian)

34 For more detail, see in particular: Wittgenstein, L. Logical-Philosophical Treatise [Logiko-filosofskii traktat] / L. Wittgenshgein. Philosophical Works [Filosofskie raboty]. M.: Gnosis, 1994. T. 1. Pp. 1-73. (transl. from German) P. 6. Taking into account the above, we cannot agree with some researchers who believe that the true information, that is, corresponding to reality is included in the database (Savelyev, A.I. Data Commercialization Regulation in the Era of Shaping Digital Economy (Civil Law Aspects) [Grazhdansko-pravovye aspekty regulirovaniya oborota dannykh v usloviyakh popytok formirovaniya tsifrovoi ehkonomiki] // Civil Law Review [Vestnik grazhdanskogo prava]. 2020. No. 1. Pp. 60-92. (in Russian) P. 65) To say nothing of the logical circle, the definition contains refers to meaningfully irrelevant categories of «truth», «reliability», etc. In our opinion, it is more correct to assume that databases include any data; in fact, selection of such data is information, that is, minimization of uncertainty (entropy), inherent in reality.

35 See: Shannon, C. Mathematical Theory of Communication [Matematicheskaya teoriya svyazi] / C. Shannon. Works on Information Theory and Cybernetics [Raboty po teorii informatsii i kibernetike]. M.: Publishing House of Foreign Literature [Izd-vo inostr. literatury], 1963. Pp. 243-332. (transl. from English) P. 245-246.

36 See: R.V.L. Hartley, Transmission of Information, Bell System Technical Journal. 1928. Vol. 7.No. 3.P. 538 ff.

37 See: V.A. Laptev, V.A. Digital Assets as Objects of Civil Rights [Tsifrovye aktivy kak ob»ekty grazhdanskikh prav] // Legal Science and Practice: Journal of Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia [Vestnik Nizhegorodskoi akademii MVD Rossii]. 2018. No. 2 (42). Pp. 199-204. (in Russian) p. 201.

38 See: Nakamoto S. Bitcoin: Peer-to-Peer Electronic Cash System [Online source]. URL:https://bitcoin.org/bitcoin.pdf (date of access: 20.02.2021).

39 See: Kukhta, M.S. Design in Information Society: Disappearing Function of a Thing [Dizain v informatsionnom obshchestve: ischezayushchaya funktsiya veshchi] // Proceedings of the Academy of Technical Aesthetics and Design. 2014 [Trudy akademii tekhnicheskoi ehstetiki i dizaina]. 2014. No. 2. Pp. 36-38. (in Russian) P. 38.

Actually, in recent decades we have witnessed the same situation in relation to such new objects as non-documentary securities (this concept was totally obscure some ten years ago) and non-cash funds; nowadays, virtual game property has received a similar *sui generis* status of property within the legal definition given Article 128 of the Civil Code of the Russian Federation. Of course the virtual game property, being a special property and becoming the object of property relations, needs a legal mode that meets requirement of formal certainty, generally inherent in law[40]. This means that sooner or later «other property» category turns either into ownership or into the object of obligatory requirements, which will alter the content of the subjective rights and give them new properties, as considered below.

3. The System of Subjective Civil Rights and its Digital Transformation

The main conclusion derived from the above is that an increasing level of social entropy in terms of digitalization of society, emergence of new types of property relations (and, in the future, personal non-property relations) and new objects increase regulatory role of subjective rights and obligations that make essence of legal relations. It seems that in the long run they can become the background for relevant legal institutions developing at a new stage of system of justice. At the same time, these rights are also transformed as a result of emergence of new objects, altering the balance of real rights and obligation rights, which take a central place in the system of subjective civil rights.

We believe that such transformation results in emergence of the concept of digital rights; identification of their legal nature involves two approaches. Supporters of the first approach, guided by Article 128 of the Civil Code of the Russian Federation that classifies digital rights as «other property» category, rely upon the proprietary nature of these objects[41]. This point of view makes the backbone of the decision taken by Ninth Arbitration Court of Appeal of Moscow 15.05.2018 in case No.A40-124668/2017, which qualifies digital assets as other property, under the legal definition above[42]. The second approach states that digital rights have the obligational nature and, strictly speaking, cannot be recognized as property, since they represent a demand to an obligated person or persons to enter a record of a completed transaction onto the block-chain[43]. We suppose that the solution of this problem is not *ad hoc*, or contextual, but should be based on general features that distinguish real rights and obligation rights.

It is well-known that the dichotomy of real rights and obligation rights was partly known as long as in the time of Roman law, in which used two types of claims: property (*actiones in rem*) to protect ownership of property and personal (*actiones in personam*) to protect obligation claims[44]. Both Roman private law and the civil science of Ancient Rome lacked a well-developed conceptual framework that would provide doctrinal comprehension and practical application of those categories. In view of the above, it becomes clear why there is a paradoxical confusion of absolute and relative rights, clearly manifested in the category *jura in re aliena*, which included, along with the *predial servitudes* as limited real rights, rights with a purely obligational nature[45].

For example, the rights to other people's items (namely, to personal servitudes) included various types of lease relations that only formally differed from the *locatio-conductio rei* contract, including *usus, habitatio, operae servorum vel animalium*, etc. It is interesting to consider the emphyteusis, which was almost a full analogue of life-long inherited land ownership (Articles 216, 265-267 of the Civil Code of the Russian Federation), in scientific writings it is often defined as «perpetual lease» of land. Lack of clear understanding of difference between absolute and relative subjective rights, including at the doctrinal level, can be proved among other things, by no distinction between methods of transfer of ownership and rights of claim. It is commonly known that speaking about assignment of any subjective rights, they uses the term *cessio* (more precisely, *in iure cessio*, that is, assignment of rights in the presence of a magistrate through a fictitious litigation).

In Roman private law cession, along with mancipation and tradition, served as a universal method of succession, while the current legislation (Article 388 of the Civil Code of the Russian Federation) defines cession only as assignment of the right of claim, that is, transfer of subjective obligation right. This means that Roman lawyers did not take into consideration such feature of real right as a link to an object, due to which transfer of ownership, as well as transfer of property, were impossible without active involvement of both the alienator and the acquirer of the right.

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40 See: Arkhipov, V.V. Virtual Property: Complex Legal Issues within the Context of Development of Online Games Industry [Virtual'naya sobstvennost': sistemnye pravovye problemy v kontekste razvitiya industrii komp'yuternykh igr] // Law [Zakon]. 2014. No. 9. Pp. 69-90. (in Russian) P. 82.

41 See: Tolkachev, A., Zhuzhzhalov, M. Cryptocurrency as a Property – Analysis of Current Legal Status [Kriptovalyuta kak imushchestvo – analiz tekushchego pravovogo statusa] // Herald of Economic Justice [Vestnik ehkonomicheskogo pravosudiya Rossiiskoi Federatsii]. 2018. No. 9 (55). Pp. 91-135. (in Russian) P. 91.

42 See: [Online source]. URL: https://kad.arbitr.ru/PdfDocument/3e155cd1-6bce-478a-bb76-1146d2e61a4a/58af451a-bfa3-4723-ab0dd149aafecd88/A40-124668-2017_20180515_Postanovlenie_plljac (date of access 21.02.2021)

43 See: Novoselova, L.A. On the Legal Nature of Bitcoin [O pravovoi prirode bitkoina] // Business and Law [Khozyaistvo i pravo]. 2017. No. 9. Pp. 3-15. (in Russian) P. 12.

44 See: Savigny, F.K. The System of Modern Roman Law. In 8 volumes. Vol. III [Sistema sovremennogo rimskogo prava. V 8 t. T. III]. M.: Statut, 2013. 717 p. (transl. from German) (in Russian) P. 332.

45 See: Benke N., Meissel F.S. Ubungsbuch romisches Sachenrecht. Wien: Manz'sche Verlag, 2008. P. 10.

Due to a number of social-economic, historical-legal and intellectual reasons, the modern system of justice has a better differentiation of real rights and obligation rights, both in terms of content and legal formalities. As a result, the number of limited real rights is reduced, and the main features that distinguish real rights from obligation rights are defined better[46]. This tendency, evolving with transformation of the system of justice during transition from one historical stage to another, was manifested in the closed list of real rights (*numeris clausis*), captured the civil laws of some foreign countries[47] 47. In particular, in the modern civil law in the Netherlands there are new types of real rights (including to such objects as domain names), although the general principle of numeris clausis is maintained[48]. The doctrine and jurisprudence of Switzerland also recognize a limited list of real rights[49].

It should be noted that some scholars, skeptical about a closed list of subjective civil rights, believed that such limitations are only possible in a relatively static legal order with a small number of typical legal situations and a stable set of relations to be settled, which is far from the modern society, where constantly changing social realities give rise to a huge number of new relations and non-typical subjective rights[50]. Hence, it is concluded that a closed list of subjective civil rights is a legislative fiction to a greater extent than their real features.

It is not taken into account that types and signs of subjective civil rights are not something conventional established by the legislator, but are manifestations of their objectively inherent features that reflect characteristics of the system of justice. Like civil law norms, subjective civil rights create the system of justice, using legally significant forms to fix both dynamics and statics of the property turnover of social benefits. In order to ensure formal certainty to the extent that satisfies the system of justice, all its elements should be formed most practically, in order to fit the whole range of objects of the social world, which increases with its historical development, into a relatively narrow standardized list of subjective civil rights. At the same time, new objects of rights are classified by abstracting from specific features at the legal level, and captured (depending on the conditions of the legal mode) as objects of either real rights or obligation rights.

The aforesaid explains transformability of subjective civil rights, which makes them cover a broader range of phenomena in public life, including «impossible» in classical terms digital rights and other digital assets. Of course, we should not deny emergence of new types of subjective rights, however, these new rights seem to arise as a result of adjustments to new needs of turnover of the content and features of existing subjective rights. For example, a large group of secondary rights relatively new for national civil law that have been thoroughly considered only in the most recent years[51] is a result of transformation of some obligation rights and their convergence with real rights. It proves an active interaction between these categories, which entails promising and far-reaching consequences.

Developing economy brings new come into everyday use, and their turnover requires synthetic legal modes, including both proprietary and obligation legal modes, which contributes to convergence of corresponding types of subjective rights, their «smooth flow» into each other and, ultimately, their transformation[52]. Entwining of proprietary and obligation right, accelerated in the digital era, affects both areas and, above all, limited real rights, whose relative nature has long been claimed by lawyers[53], who suggested that only property rights be considered absolute, while all other real rights be mixed and absolute-relative[54].

Hence, nothing in the nature of crypto-currencies, digital rights, and other digital objects prevents them from acting as objects of both real and obligation relations. Depending on their properties, and on legal modes mediating their participation

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46 See in more detail: Akhmetyanova, Z.A. Property Rights in Civil Law of Russia [Veshchnye prava v grazhdanskom prave Rossii] // Civilist [Tsivilist]. 2006. No. 1. Pp. 28-37. (in Russian); Khatuntsev, O.A. The Problem of Dividing Rights into Real and Obligatory [Problema deleniya prav na veshchnye i obyazatel'stvennye] // Laws of Russia: Experience, Analysis, Practice [Zakony Rossii: opyt, analiz, praktika]. 2008. No. 9. Pp. 93-97. (in Russian)

47 See: Mager H. Besonderheiten des dinglichen Anspruchs // Archiv fur die civilistische Praxis. 1993. Bd. 193. Heft 1. P. 71; Weber R. H. Dritte Spuren zwischen absoluten und relativen Rechten? // Aktuelle Aspekte des Schuld- und Sachenrechts. Festschrift fur Heinz Rey zum 60. Gebutstag. Zurich: Schultess 2003 P. 589; Sinitsyn, S. A. Numeris clausis and Subjective Rights: Concept, Meaning, Relationship [Numeris clausis i sub»ektivnye prava: ponyatie, znachenie, vzaimosvyaz'] // Civil Law Review [Vestnik grazhdanskogo prava]. 2014. No. 3. Pp. 100-147. (in Russian)

48 See: W. Snijders, De openheid van het vermogensrecht. Van syndicaatszekerheden, domeinnamen en nieuwe contractsvormen // Onderneming en 10 jaar nieuw Burgerlijk Recht. Leiden: Kluwer, 2002. Pp. 27-58; Van der Steur J. C. Grenzen van rechtsobjecten. Een onderzoek naar de grenzen van objecten van eigendomsrechten en intellectuele eigendomsrechten. Leiden: Kluwer, 2003. P. 39 ff; Struycken T.H.D. De numerus clausus in het goederenrecht: een wetenschappelijke proeve op het gebied van de rechtsgeleerdheid. Deventer: Kluwer, 2007. Pp. 111-115, etc.

49 See: Sinitsyn S.A., Op. cit.. P. 118-119.

50 See: E. Fuchs Das Wesen der Dinglichkeit. Ein Beitrag zur allgemeiner Rechtslehre und zur КиМ des Entwurfs eines Вйrgerlichen Gesetzbuches fur das Deutsche Reich. Berlin: Heymanns, 1889, P. 75.

51 See: Em, V.S., Sukhanov, E.A. About the Types of Subjective Civil Rights and the Limits of Their Implementation [O vidakh sub»ektivnykh grazhdanskikh prav i o predelakh ikh osushchestvleniya] // Civil Law Review [Vestnik grazhdanskogo prava]. 2019.Vol. 19. No. 4. Pp. 7-21. (in Russian) P. 13 et seq.

52 See: Braginsky, M.I., Vitryansky, V.V. Contract Law. In 6 books. Book 1. General Provisions [Dogovornoe pravo. V 6 kn. Kn. 1: Obshchie polozheniya]. M.: Statut, 2011. 850 p. (in rus) P. 223.

53 See: Efimova, L.G. About the Relationship between Property and Liability Rights [O sootnoshenii veshchnykh i obyazatel'stvennykh prav] // State and Law [Gosudarstvo i pravo]. 1998. No. 10. Pp. 37-44. (in Russian) P. 16-22.

54 See: Raikher, V.K. Absolute and Relative Rights (to the Problem of Dividing Economic Rights) [Absolyutnye i otnositel'nye prava (k probleme deleniya khozyaistvennykh prav)] // Civil Law Review [Vestnik grazhdanskogo prava]. 2007. No. 2. Pp. 144-204. (in Russian)

in the civil turnover, digital property acts both as «items», distinguished from other objects by identity signs, and as actions with obligatory execution. As a result, such property is legally captured either in real rights or obligation rights.

For example, tokens, crypto-currency, domain names and accounts, virtual game property, having all features of physical items, can belong to the parties in the turnover under ownership or other real rights. On the other hand, the content of web resources, Big Data and other information, as well as electronic securities, as a rule, act as objects of relative rights, including obligation rights, and their turnover is governed by appropriate regulatory means. This conclusion, being essentially correct, still needs important explanations. The fact is that practically the digital phenomena under consideration in their real and obligatory natures often promote blurring of rigid (and largely conventional, even when it comes to ordinary things or actions) boundaries between absolute and relative rights, and facilitate active interaction and convergence of these types of subjective rights. It seems to be the most important and interesting trend in transformation of subjective civil rights in the digital age.

This trend can be seen in the foreign practice when it comes to regulation of one more type of digital objects, namely tokens, or digital signs[55]. The report No. 80207 of the US Securities and Exchange Commission dated June 25, 2017, treats tokens as databases (data access objects) used in digital money management and defines them in accordance with section 21 (a) of the Secure Exchange Act 1934 as taxable property assets[56], which is supported by case-law of the Supreme Court of the USA[57]. At the same time, law enforcement officials remark that tokens are treated both as securities that secure obligatory requirements and digital means of payment[58]. Hence, transforming due to digitalization of social relations, obligation rights not only converge with real rights in the nature, essence and content, but can act as objects of real rights, and vice versa, which is especially important to consider when speaking about civil turnover of digital rights and other digital objects.

M.I. Braginsky drew attention to this feature, when considering the balance of real rights and obligation rights of a corporation as a property facility, including, among other things, rights of claim, debts, rights to means of business identity, works and services, and other exclusive rights, unless otherwise mentioned in law or contract[59]. Corporations in general and their components, including obligation rights and other rights, may be objects of transactions aimed at establishing, changing or terminating real rights (clause 2 Article 132 of the Civil Code of the Russian Federation). In recent years, scientific research has highlighted prevailing situation when a corporation as property facility can include non-documentary securities and non-cash funds assigned in full or in part in case of transactions with the corporate shares[60]. In a similar fashion, we can also talk about fundamental possibility of acquiring and disposal of real rights to digital property (tokens, crypto-currencies, other digital rights, including the right to claim) arising out of current civil legislation.

A shift to a post-industrial economy boosts digitalization of civil turnover and gives rise to more and more common situation when property facilities either include digital rights as an integral part, or consist only of digital rights. Logic of legal regulation requires that such facilities should be recognized as corporations not only in fact, but in law, as well. Returning to the case under consideration, it will imply either amending paragraph 1 Article 132 of the Civil Code (currently recognizing a corporation as real estate, not including digital objects), or revising legal definition of the very concept of a thing. It is worth noting that some steps in this direction are already being taken in the civilistic doctrine. A comprehensive examination of «digital things» has been recently made by V.V. Arkhipov, who introduced the concept of virtual property into research[61].

This implies a paradoxical, at first glance, conclusion, which fully corresponds to the development trends of a computerized society, including digitalization of social reality and emergence of so-called «imaginary landscapes» that exist only in virtual space[62]. Namely, if we recognize the digital things as are objects of virtual property as real, digital property will be quite real, too, and its identity means will be an entry in the electronic register. We believe, that such step, caused by practical needs, will contribute to transformation of the whole system of objects of civil rights and, ultimately, of these rights.

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55 See: Kornienko, N.Yu., Korolev, G.A. Development of Approaches to the Legislative Regulation of Cryptocurrency Turnover as a New Type of Financial Instruments in the EAEU Countries [Razvitie podkhodov k zakonodatel'nomu regulirovaniyu oborota kriptovalyuty kak novogo vida finansovykh instrumentov v stranakh EAEHS] // Taxes and Finance [Nalogi i finansy]. 2018. No. 4. Pp. 18-25. (in Russian) P. 19.

56 See: Report of Investigation Pursuant to Section 21 (a) of the Securities Exchange Act of 1934: the DAO [Online source]. URL: https://www.sec.gov/litigation/investreport/34-81207.pdf (date of access: 21.02.2021).

57 See: SEC v. C. M. Joiner Leasing Corp., 320 U.S. 344, 351 (1943); Reves v. Ernst & Young, 494 U.S. 56, 61 (1990).

58 See: Financial Action Task Force (FATF) Report Virtual Currencies Key Definitions and Potential AML / CFT Risks (June, 2014) [Online source]. URL: http://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf (date of access: 21.02.2021).

59 See: Braginsky, M.I. On the Issue of the Relationship between Property and Obligations [K voprosu o sootnoshenii veshchnykh i obyazatel'stvennykh pravootnoshenii] // Civil Code of Russia: Problems. Theory. Practice [Grazhdanskii kodeks Rossii: Problemy. Teoriya. Praktika] / ex. ed. A.L. Makovsky. M.: Publishing House of International Center of Financial and Economic. Development [Izd-vo Mezhdunar. tsentra finansovo-ehkonomich. razvitiya], 1998. Pp. 113-130. (in Russian) P. 125.

60 See: Usmanov, I.P. Non-Documentary Security – Is It Fiction? [Bezdokumentarnaya tsennaya bumaga – fiktsiya li ehto?] // Society and Law [Bezdokumentarnaya tsennaya bumaga – fiktsiya li ehto?]. 2009. No. 2 (24). Pp. 7376. (in Russian) P. 76.

61 See: Arkhipov V.V., Op. cit. P. 69-90.

62 See: Appadurai A. Modernity at Large: Cultural Dimensions of Globalization. Minneapolis: University of Minnesota Press, 1996.

4. Trends in Digital Transformation of Subjective Civil Rights

We saw that emergence of digital objects that are gradually captured at the legislative level, stimulates digital transformation of subjective civil rights, which, in case of lacking detailed regulation, serve as a main regulator of emerging relations. Having said this, we not imply that subjective rights and obligations are dominating in regulatory terms. Both norms and subjective civil rights are the means of the system of justice that bring order to social reality by selecting legally significant components and unifying them within the legal system. These means help to minimize uncertainty inherent in non-equilibrium social processes, reducing the degree of entropy that characterizes civil turnover, and thereby performing a constructivist function[63].

Legal constructions, discussed above, play an important role in creation of the system of justice. In the broad sense, they represent obligatory statements about actual circumstances of a possible, proper or prohibited behavior of subjects to the regulated relations. In this way, legal constructions create a subject field within which members of society can exercise their legal behavior, and indirectly regulatory effect such behavior. Consequently, legal constructions consisting of both norms and subjective rights and obligations of the parties, determine basic characteristics of legal reality, including civil turnover as one of its aspects.

Their formal and logical relations with other elements of the legal system (first of all, with rules of behavior at various levels) determine a systemic transformation of legal reality that occurs as a result of creation of new structures based on either definitive statements or modifications of already existing structures. It should be remarked that all components of legal reality included in those structures have sign-symbolic properties, which means that their legal manifestations are relatively independent in from the nature and essence of objects of the natural or social world that act as referents of these signs.

This, returning to the example of «virtual», or digital, property, it is necessary to explain that the case does not mean a fictitious nature of the property or loss of its physical characteristics. We are talking about emergence of a new legal mode that is based on the structure and includes new subjective rights with legal obligations and, as a result, a method of normative regulation, which serves as a new model of behavior for parties in civil turnover. If we theoretically suppose that there can be a legal corporation that includes only digital rights, crypto-currency and other digital objects, the legal mode of such property will be identical to the mode applied to an ordinary property.

In particular, information about such property shall be entered into the Unified State Register of Real Estate, as prescribed by Article 7 of the Federal Law No. 218-FZ of 13.07.2015 «On state registration of real estate»[64], the title to this object will arise after state registration (Articles 219 and 223 of the Civil Code of the Russian Federation), transactions will be made in accordance with the general rules for transactions with real estate (Articles 131 and 164 of the Civil Code), etc. It is necessary to highlight that emergence of new subjective rights and creation of legal modes of digital property do not arise from a physical or social nature of things, but are brought into being by the internal logic of development of the system of justice.

Physical characteristics of digital objects are defined by legal means (norms of law, subjective rights and obligations), which establish a procedure and conditions for turnover of this property. It is noteworthy that such situations are not uncommon for civil law regulation. Emergence of any new types of property and, accordingly, new relations developing in connection therewith, led to a radical restructuring of legal modes and emergence of new legal instruments to regulate such relations and means to protect the rights and legitimate interests of their participants.

For instance, according to L.A. Novoselova, disposal of a security, meaning that transfer of a document is transfer of the right certified by it, creates a new legal mode totally different from circulation of material objects (things)[65]. More far-reaching legal and economic effects are caused by disposal of non-documentary securities, digital rights, information, and other non-material objects, which confers the same status to transfer of the right, including the right to claim under the obligation, to a traditional thing and transfer of ownership thereto. We suppose that experience of French legislation may be very interesting, in particular, The Digital Republic Law No. 2016-1321 of 07.10.2016[66], which give the right to consumers of electronic communication services to demand that the Internet operator fully return their personal data, like vindication of property from someone else's illegal possession[67] ...

The subjective rights are also undergoing a transformation, which involves expanding range of opportunities for their owners, detailing the powers and emergence of new types of claims against the obligated persons. This transformation of subjective rights, occurring amidst systemic interconnections of all elements of the legal mode, can be defined as digital

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63 See: Khalabudenko, O.A. Legal Norms in the Focus of the Constructivism Theory // Theoretical and Applied Law. 2020. No. 2 (4). Pp. 31-43. (in Russian and in English) P. 37 et seq.

64 Civil Code of the Russian Federation. 2015. No. 29. Part 1. Article 4344; 2020. No. 22. Article 3383.

65 See: Digital Rights – a New Object of Civil Rights [Tsifrovye prava kak novyi ob»ekt grazhdanskogo prava] // Zakon. 2019. No. 5. Pp. 31-54. (in Russian) P. 32.

66 See: Loi No. 2016-1321 du 7 octobre 2016 pour une Republique numerique [Online source]. URL: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033202746&categorieLien=id (date of access: 21.02.2021).

67 See: Talapina, E. V. Digital Transformation in France: legal Innovations [Tsifrovaya transformatsiya vo Frantsii: pravovye novelly] // Law. Journal of the Higher School of Economics [Pravo. Zhurnal Vysshei shkoly ehkonomiki]. 2019. No. 4. Pp. 164-184. (in Russian) P. 172-173.

transformation[68]. The most important factor for the latter is emergence of digital legal relations[69], which, as a totally new element of the modern system of justice, cannot be described in terms «ordinary» proprietary or obligatory subjective rights[70]. Nevertheless, being matched to objects of real right or obligations rights in the legal mode, digital assets are involved in civil turnover, contributing to transformation of subjective rights in order to ensure full and comprehensive exercise of property interests of the parties.

To give an example of what was described above, let us consider electronic securities accumulated on the brokerage accounts of stock exchange traders. Having no traditional paper form, but possessing all necessary details under Article 143.1 of the Civil Code, such securities lose their relations to a material carrier, becoming simply records in electronic databases, which nevertheless does not prevent them from certifying subjective rights that the holder of any security possesses (the right to take part in management of a corporation, receive shares in profit and in the liquidation balance, etc).

As other scholars remark, «the nature ... of a security serves as an example of a high abstraction that separates the external form, the shell, i.e. the legal structure of a financial instrument, from its substrate, that is, combination of rights and obligations given by the financial instrument»[71]. So, in the digital age, many assets, in particular, financial assets[72] are losing their material or substantive form, but at the same time retaining their legal form – subjective rights and obligations.

Obviously, this process also involves transformation of subjective rights and obligations, which will bring new social benefits into the legal reality, creating necessary factors for emergence of legal relations with such objects. At the same time, transformation of subjective rights as a result of emergence of new objects (in this case digital assets) makes a serious impact on the whole system of justice, when captured at the regulatory level. When we adopt normative legal acts regulating digital relations, transformation affects the system of objective law, resulting in its restructuring, which manifests itself in emergence of new legal institutions that dramatically transform not only the system of subjective civil rights, but the processes of legal regulation in general.

5. Conclusions

Development of a digital society deeply affected legal regulation in general and regulation of civil law in particular. The most important result of those processes is emergence of digital objects, which are databases used as virtual analogues of material benefits in commercial turnover. Not being traditional things, digital objects still have reduced physical properties and have a semiotic symbolic nature, so, they can be used as universal symbolic substitutes for any kind of property. Nowadays we can most often see how digital objects are used as settlement instruments for transactions made on commodity, stock, financial and other exchanges.

Digital property as a phenomenon of social reality is created by electronic means and operates in the virtual space, which does not prevent transactions with them various life situations, and most of property relations have a legal nature and, as a result, need legal regulation ... We are referring to creation of a special legal mode that determines the place of digital objects in the system of civil (and other) rights, procedure and conditions for their turnover, supporting reasons of ownership, validity conditions of transactions with such objects, and procedure for protecting the rights to them. Considering that normative regulation of digital turnover, at least in the Russian Federation, is in its infancy and requires further development, subjective rights play the leading role in creation of that digital legal mode. Being the main means of capturing digital objects in the legal reality, subjective civil rights are subject to transformation that dramatically alters their nature and content.

Transformation that occurs when subjective rights are integrated into virtual reality is called digital transformation. One of the most obvious manifestations of digital transformation is convergence of real subjective rights and obligatory subjective rights, resulting from characteristics of digital objects. As demonstrated in this paper, digital property, primarily digital rights, is a typical example of non-material benefits that may belong to parties in civil turnover under the right of ownership or other subjective civil law. The variety of digital, virtual objects, which include crypto-currency and other electronic financial assets, records in databases (Big data), domain names and accounts, game property, other virtual

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[68] The problem of digital transformation of both law in the objective sense and subjective rights is already being considered in the publications of some Russian authors. See, for example: Kartskhia, A.A. Digital Transformation of Law [Tsifrovaya transformatsiya prav] // Monitoring of Law Enforcement [Monitoring pravoprimeneniya]. 2019. No. 1 (30). Pp. 25-29. DOI: 10.21681/2226-0692-2019-1-25-29 (in Russian)

[69] See in more detail: Andreev, V.K. Dynamics of Regulating of Artificial Intelligence [Dinamika pravovogo regulirovaniya iskusstvennogo intellekta] // Journal of Russian Law [Zhurnal rossiiskogo prava]. 2020. No. 3. Pp. 58-68. (in Russian) P. 60-61.

[70] See: Dmitrik, N. A. Digital Transformation: Legal Dimension [Tsifrovaya transformatsiya: pravovoe izmerenie] // Jurisprudence [Pravovedenie]. 2019. Vol. 63. No. 1. Pp. 28-36. (in Russian) P. 31.

[71] Chikulaev, R.V. Issues of Electronic Financial Instruments [Voprosy ehlektronnykh finansovykh instrumentov] // Perm Legal Almanac [Permskii yuridicheskii al'manakh]. 2019. No. 2. Pp. 528-543. (in Russian) P. 529.

[72] Once, this tendency was noted by the French philosopher J. Baudrillard, who treated loss of material form of objects as manifestation of «simulation», in his opinion, characterizing the postmodern era. See: Baudrillard, J. Symbolic Exchange and Death [Simvolicheskii obmen i smert']. M.: Dobrosvet, 2000. 387 p. (transl. from French) P. 73-79.

property, make them, depending on the legal mode, serve as objects of real rights and obligation rights. Moreover, while these subjective civil rights are digitally transformed, we can witness their convergence, active interaction, and in some cases, interpenetration, due to the essential properties inherent in the class of digital objects.

Digital transformation of the content of subjective rights makes them a flexible and effective tool for regulating civil turnover of virtual objects, and contributes to virtualization of any types of material benefits. In particular, emergence of a large number of property facilities (corporations), which include digital rights, electronic money and securities, and other databases, give rise to development of digital property, whose legal mode is similar to material property, although applied to wholly or mostly digital objects. Apart from that, the fact that digital corporations as property facilities have characteristics of subjects of rights transforms the sphere of corporate rights and can, as has happened in the past, serves as a factor for emergence of new types of legal entities with organizational and legal forms already captured in civil legislation due to digital transformation.

This article deliberately left aside the sphere of personal non-property rights, whose prospects of digital transformation are actively discussed. Virtualization of intellectual, in particular, creative deliverables and emergence of new technologies show that concepts formulated by the civil doctrine in relation to digital rights are applicable here, too. In particular, we can talk about development of digital copyright in the near future, which will require rethinking of Article 1255 of the Civil Code of the Russian Federation, as well as digital rights to corporate identity means, goods, works, services and corporations. When a corporation treated as a property facility undergoes digital transformation, it seem necessary and logical to reformulate Part IV of the Civil Code of the Russian Federation. We believe that the range of issues discussed here can lead to fruitful discussions that open new horizons in development of legislation and the science of civil law.

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Cybercrime and Digital Transformation

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ABSTRACT
Cyberspace crime is a critical threat to the information security of the state and civil society institutions. Inside global network the abuse of computer user's trust allows organized criminal groups to achieve their economic and political goals by committing offenses in the international information space. The methods of participatory observation, comparative legal and discourse analysis show that digital transformation has weakened the influence of the state on the development of the cultural sphere of society, and computer technologies have become the object of interests of criminal structures. Digital transformation has created virtual reality based on the laws and regulations of the networked community. Civil society by rejecting most of the peremptory norms imposed by national governments for political purposes produce victims of a wide range of cybercrimes: fraud and computer misuse offences and obscene publications. Since digital transformation is a universal phenomenon that will inevitably change the life of the entire world community, it is necessary to reach a consensus on the development and implementation of modern international agreement which, on the one hand, will guarantee freedom of speech and the right of every person to access information, and on the other hand will protect citizens, states and social institutions from criminal encroachments in an actively developing digital environment.
Keywords: human rights, crime, information, fraud, extremism, hacker, responsibility, public danger, technology

The Secretary-General of the United Nations, Antonio Guterres, in November 2018, commenting on the work of the United Nations Office on Drugs and Crime (UNODC), drew attention to the fact that «new technologies, including big data, artificial intelligence and automation, are entering an era of transformation, ...and, despite the benefits that such progress brings, it also contributes to the emergence of new forms of crime»[1]. It is obvious that the development of information technologies, creating a virtual environment for public relations, actualized new criminal schemes with unique and insufficiently studied ways of committing crimes (modus operandi). In the context of digital transformation, when questions arise about the responsibility for decisions made by artificial intelligence, and the machine processing of big data almost completely eliminates the possibility of regulatory restrictions on access to information for a long time, the legislator is faced with the task of creating such criminal law norms that will simultaneously promote technological progress and bring to justice those responsible for committing crimes.

The development of national legislation in the context of digital transformation lags behind the pace of technological progress. Artificial intelligence, various elements of which are systematically developed and implemented by transnational corporations, is designed to promote the achievement of sustainable development goals[2], and the response of the state apparatus to the formation of a cross-border and self-developing cybernetic environment is predetermined by the interest of social institutions in organizing international dialogue on the scale of the global media space. It is obvious that global systems of international communication do not give individuals the right to abuse freedom of speech[3], to use artificial intelligence and big data for criminal purposes[4], to create criminal communities in the virtual space[5]. However, the differences in the understanding of the legitimacy of various forms of protest behavior raise the issue of the difference in the cyberspace of the

[1] «Much work to do and no time to waste» in cybercrime fight, says UN chief [Online source]. URL: https://news.un.org/en/story/2018/05/1009692 (date of access: 25.02.2021)
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[5] See.: Broadhurst R. G., P. Grabosky, M. Alazab, S. Chon. Organizations and Cyber Crime: An Analysis of the Nature of Groups Engaged in Cyber Crime // International Journal of Cyber Criminology. 2014. Vol. 8. Iss. 1. Pp. 1-20. DOI: 10.2139/ssrn.2345525

actions of modern criminals and «partisans» who want to «stay in the political sphere» and do not want to «fall into the criminal sphere» in their desire to force a change in the order of life[6].

Vice-President of the European Commission MargaritisSchinas at the meeting of the Commission on January 29, 2020 emphasized that «the fight against cybercrime is a key part of the work to create a European Union that protects its citizens. Cybercriminals know no boundaries.»[7] At the same time, the broad international recognition of the threats and dangers of criminal activity in the virtual space of computer networks has not brought the world community closer to a consensus in distinguishing between legitimate democratic protest and criminal propaganda of violent extremism. Statistics on cybercrime show that, while about 80% of criminals in the virtual space commit offenses from selfish motives[8], the rest of the attackers express their behavior in active protest against the political system and modern civil ethics.

The nature of the impact of digital transformation on the dynamics of cybercrime is determined by the rationality of the use of computer technologies, thanks to which new objects of legal regulation appear, such as social networks, virtual things and multimedia information resources. With the expansion of the possibilities of digital technologies, all spheres of society are being transformed, which means that the criminal world is also changing, where there is less gross violence and more high technologies appear. As the anonymity of Internet users and their physical distance from each other contribute to the prosperity of fraud in the virtual world, the level of trust in Internet resources also decreases. Given the low level of mutual trust and disunity of social media users, criminal communities that rely on radicalization and violent extremism in the virtual space, as a rule, have little chance of success. The agenda of multimedia information resources is dictated by digital multinational corporations, which are not interested in criminalizing their own business and act as natural allies of law enforcement agencies in countering various manifestations of violent extremism.

American scientist Sidney Tarrow describes any active protest as «power in motion», where the inspiration of the protesters who have experienced social stigma, police dogs, rubber bullets, fights and even the death of friends arises when people come together to collectively realize their aspirations[9]. When using the virtual space of the Internet to express political protest, many activists and researchers of social movements are skeptical about the potential consequences of Internet activism, preferring offline protest as a «real protest»[10]. However, the low effectiveness of virtual protest does not exclude the efforts of extremist communities to radicalize public opinion through «online protest»[11] with the subsequent escalation of radicalization to the level of «real protest»[12].

It is obvious that a broader implementation of Federal Law No. 436-FZ of December 29, 2010 «On the protection of children from information harmful to their health and moral development»[13] and a number of relevant legal norms can serve as a legal means of protecting minors from certain manifestations of cybercrime. At the same time, the expertise of information products, firstly, depends on the qualifications of experts and their moral and political views, and secondly, is limited to the legal space of Russia. According to the reasoned opinion of Professor A. I. Bastrykin, «the responsibility for the safety of the child when he communicates on the Internet should be taken by his family. After all, unlike direct contact with a criminal, it should be easier for a child to stop communicating with a pedophile on social networks.»[14]

The virtual world of social networks and the interface of computer programs differ significantly from real actions and direct communication, since the logic of the virtual act and its consequences depend on the features of the digital environment within which communication takes place and legally significant actions are performed. In the virtual space, deliberately low-

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7 Cybercrime: New Survey Shows Europeans Feel Better Informed but Remain Concerned [Online source]. URL: https://ec.europa.eu/commission/presscorner/detail/hr/ip_20_143 (date of access: 01.03.202)

8 Kirilenko, V. P., Alekseev, G. V. Harmonization of Russian Criminal Legislation on Combating Cybercrime with the Legal Standards of the Council of Europe [Garmonizatsiya rossiiskogo ugolovnogo zakonodatel'stva o protivodeistvii kiberprestupnosti s pravovymi standartami Soveta Evropy] // Russian Journal of Criminology [Vserossiiskii kriminologicheskii zhurnal]. 2020. Vol. 14. No. 6. Pp. 898-913. DOI: 10.17150/2500-4255.2020.14(6).898-913. (in Russian)

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12 Supra note 10

13 Odintsova, N. E., Repetskaya, A. L. Problematic Aspects of Domestic and Foreign Legislation in Countering the Propaganda of Pedophilia [Problemnye aspekty otechestvennogo i zarubezhnogo zakonodatel'stva v protivodeistvii propagande pedofilii] // International Journal of Humanities and Natural Sciences [Mezhdunarodnyi zhurnal gumanitarnykh i estestvennykh nauk]. 2019. No. 11-3 (38). Pp. 84-89. DOI: 10.24411/2500-1000-2019-11821. (in Russian)

14 Bastrykin, A. I. Crimes Against Minors in the Internet Space: On the Issue of Victimological Prevention and Criminal- Legal Assessment [Prestupleniya protiv nesovershennoletnikh v internet-prostranstve: k voprosu o viktimologicheskoi profilaktike i ugolovno-pravovoi otsenke] // Russian Journal of Criminology [Vserossiiskii kriminologicheskii zhurnal]. 2017. Vol. 11. No. 1. Pp. 5-12. DOI: 10.17150/2500-4255.2017.11 (1).5-12. (in Russian)

quality and counterfeit goods are sold, Darkweb resources allow you to organize trade in goods withdrawn from economic circulation and pay for services of openly criminal content[15], extremist communities recruit supporters through social networks[16]. Online extremism, aimed at radicalizing public opinion and recruiting new supporters, is carried out by organized criminal groups[17]. Studies in the field of media security[18] and violent extremism[19] demonstrate the irrationality of the media logic of propaganda of violent extremism, which is partly due to the interest of radical groups in recruiting individuals suffering from mental disorders, including murder-suicide syndrome[20].

The digital transformation has changed the perception of crime so much that it is sometimes difficult to distinguish victims from accomplices in crime, and the methodology for scientific assessment of the dynamics of cybercrime predicts an increase in online crime[21]. A review of available victimization surveys shows that between 2010 and 2020, cybercrime can account for between one-third and one-half of crimes in developed countries[22]. In Russia before the easing of the criminal policy in 2018 in relation to extremist offenses in the virtual space, the number of crimes of a terrorist nature and extremist orientation grew rapidly[23]. There is every reason to believe that the increase in computer crime has contributed to a decrease in the level of traditional crime, and cybercrimes themselves are not included in the official statistics. While the degree of public danger of cybercrime is steadily increasing, it is clear that «the largest part of cybercrime remains outside the scope of statistics».[24]

The harmonization of the Russian criminal legislation in the field of digital technologies with the norms of the criminal law of developed countries is a necessary condition for the organization of international police cooperation. The need for international cooperation in countering cybercrime is determined by the absence of state borders in the information space. The development, under the auspices of the Council of Europe, of the Convention on Cybercrime ETS No. 185 (Budapest, 23 November 2001) and the ratification of this agreement by the majority of the Council of Europe member States is an important element of global cybersecurity. The Additional Protocol to the Convention on Cybercrime concerning the criminalization of offences related to manifestations of racism and xenophobia committed through Computer Systems, ETS No. 189 (Strasbourg, 28 January 2003), extended the Convention to extremist offences.

The Russian Federation is not a party to the Convention on Cybercrime, but most of the provisions of the Budapest Convention have become widely accepted norms of customary international law. Despite the fact that the Order of the President of the Russian Federation of March 22, 2008 No. 144-rp was canceled by the order of the President of the Russian Federation of November 15, 2005. No. 557-rp «On signing the Convention on Cybercrime»[25], the rationality of most of the provisions of this Convention is not in doubt, since it was initially emphasized that «the Russian Federation proceeds from the fact that the provisions of paragraph «b» of article 32 of the Convention are formulated in such a way that they can harm the sovereignty and national security of the participating States, the rights and legitimate interests of their citizens and legal

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15 See: Martin J., Munksgaard R., Coomber R. & oths. Selling Drugs on Darkweb Cryptomarkets: Differentiated Pathways, Risks and Rewards // British Journal of Criminology. 2020. Vol. 60, iss. 3. Pp. 559-578. DOI: 10.1093/ bjc/azz075

16 See: Earl J. Protest Online: Theorizing the Consequences of Online Engagement. In L. Bosi, M. Giugni & K. Uba (Eds.). The Consequences of Social Movements. Cambridge: Cambridge University Press. 2016. Pp. 363-400. DOI: 10.1017/CBO9781316337790.015; Taylor R. W. Fritsch E. J., Liederbach J. Digital Crime and Digital Terrorism. New York: Prentice Hall Press, 2014. 416 p

17 Broadhurst R. G., P. Grabosky, M. Alazab, S. Chon. Organizations and Cyber Crime: An Analysis of the Nature of Groups Engaged in Cyber Crime // International Journal of Cyber Criminology. 2014. Vol. 8, iss. 1. P. 1-20. DOI: 10.2139/ssrn.2345525; Dalgaard-Nielsen A. Violent Radicalization in Europe: What We Know and What We Do Not Know // Stud Conflict Terrorism 2010. Vol. 33, iss. 9. P. 797-814. DOI: 10.1080/1057610X.2010.501423; Walden I. Computer Crimes and Digital Investigations / I. Walden. Oxford: Oxford University Press. 2016. 600 p

18 See, for example, Kirilenko, V. P., Alekseev, G. V. Political Technologies and International Conflict in the Information Space of the Baltic Region [Politicheskie tekhnologii i mezhdunarodnyi konflikt v informatsionnom prostranstve Baltiiskogo regiona] // Baltic Region [Baltiiskii region]. 2018. Vol. 10. No. 4. Pp. 20-38. DOI: 10.5922/2079-8555-2018-4-2. (in Russian) Kirilenko V.P., Shamakhov V.A., Alekseev G.V. Op. cit.

19 See, for example, Kirilenko, V. P., Alekseev, G. V. Actual Problems of Countering Extremist Crimes [Aktual'nye problemy protivodeistviya prestupleniyam ekstremistskoi napravlennosti] // Russian Journal of Criminology [Vserossiiskii kriminologicheskii zhurnal]. 2018. Vol. 12. No. 4. Pp. 561-571. DOI: 10.17150/2500-4255.2018.12 (4).561-571. (in Russian) P.8-18

20 Kirilenko, V. P., Alekseev, G. V. Extremists: Criminals and Victims of Radical Violence [Ekstremisty: prestupniki i zhertvy radikal'nogo nasiliya] // Russian Journal of Criminology [Vserossiiskii kriminologicheskii zhurnal]. 2019. Vol. 13. No. 4. Pp. 612-628. DOI: 10.17150/2500-4255.2019.13(4).612-628. (in Russian)

21 See: Nomokonov, V. A., Tropina, T. L. Cybercrime: Forecasts and Problems of Struggle [Kiberprestupnost': prognozy i problemy bor'by] // Criminalist Library [Biblioteka kriminalista]. 2013. № 5 (10). Pp. 148-160. (in Russian) Kirilenko V.P., Alekseev G.V. Op.cit. Supra note 8.

22 See: Reep-van den Bergh C. M. M., Junger M. Victims of Cybercrime in Europe: A Review of Victim Surveys // Crime Science. 2018. Vol. 7, art No. 5. DOI:10.1186/s40163-018-0079-3

23 Repetskaya, A. L. Current State, Structure and Trends of Russian Crime [Sovremennoe sostoyanie, struktura i tendentsii rossiiskoi prestupnosti] // Bulletin of Omsk University. Series: Law [Vestnik Omskogo universiteta. Seriya: Pravo]. 2018. No. 1 (54). Pp. 151-156. DOI: 10.25513/1990-5173.2018.1.151-156. (in Russian)

24 Zhuravlenko, N. I., Shvedova, L. E. Problems of Combating Cybercrime and Promising Areas of International Cooperation in this Area [Problemy bor'by s kiberprestupnost'yu i perspektivnye napravleniya mezhdunarodnogo sotrudnichestva v etoi sfere] // Society and Law [Obshchestvo i pravo]. 2015. No. 3 (53). Pp. 66-70. (in Russian) P.69

25 Order of the President of the Russian Federation dated March 22, 2008 No. 144-rp [Online source]. URL: http://www.kremlin.ru/acts/bank/27059 (date of access: 22.02.2021).

entities»[26]. Private procedural issues often hinder the implementation of international agreements in the national legal system and, as follows from the political scandal over foreign interference in the US presidential election, cybersecurity issues can definitely affect the fundamentally important national interests of States[27]. Digital transformation undoubtedly requires the improvement of the institutions of international information law[28].

The controversial provisions of the Convention on Cybercrime allow states parties to «access, through a computer system in their territory, computer data stored in the territory of another Party, or to obtain it if that Party has the legal and voluntary consent of a person who has the legal authority to disclose this data to that Party through such a computer system» (art. 32), which in certain circumstances may be interpreted as a legal basis for interference in matters falling within the domestic jurisdiction of a State party to the agreement. However, non-adherence to the Budapest Convention leaves open the question of the compliance of the norms of the criminal legislation of the Russian Federation with international standards and the modernity of the provisions of Chapter 28 of the Criminal Code of the Russian Federation «Crimes in the field of computer information» (Article 272-274.1 of the Criminal Code of the Russian Federation). Criminalization of illegal influence on the critical information infrastructure of the Russian Federation (Article 274.1 of the Criminal Code of the Russian Federation) does not fully reflect the substance of modern information technologies. The sovereignty of Russia in the information space is protected in accordance with the Federal Law of July 26, 2017. No. 187-FZ «On the security of the Critical Information Infrastructure of the Russian Federation», however, the criminal legislation does not define the concept of critical information infrastructure accurately enough, which creates legal uncertainty in the fight against cybercrime.

The classification of the material components of cybercrime does not cause fundamental differences in the documents of the Council of Europe, but it is an ambiguous problem in national criminal law. The 2001 Convention on Crimes in the Field of Computer Information identifies crimes against the confidentiality, integrity and availability of computer data and systems (Articles 2-6), offenses related to the use of computer tools (Articles 7-8), offenses related to the content of data (Article 9), offenses related to the violation of copyright and related rights (Article 10). Offences related to the manifestation of racism and xenophobia committed through computer systems obviously belong to the group of crimes related to the content of data. From the convention classification, it can be concluded that computer crimes can be committed both by subjects who use special knowledge in the field of computer programming technologies for criminal purposes, and by persons who use legal computer software to commit crimes. In particular, «the facts of the development of information technologies and computer networks by transnational terrorist and extremist organizations are increasingly noted, which led to the emergence of the most dangerous type of computer crime – cyberterrorism»[29], while it is obvious that cyberterrorism is associated not only with software modification, but also involves the recruitment of an audience of social networks and the promotion of extremism[30]. Computer fraud technologies are actively used to finance extremist activities and international terrorism.

In the Russian Federation, the qualification of theft under Article 159.6 of the Criminal Code of the Russian Federation «Fraud in the field of computer information» for a criminals who carried out illegal operations in a computer network (hacker) may entail the qualification of an act under the corresponding composition of Chapter 28 of the Criminal Code of the Russian Federation (an ideal set of crimes[31]), but this legal logic is not applied in practice[32]. Since hacker attacks can pursue not only economic, but also political motives[33], they are considered as a crime with a material composition and are qualified by their consequences.

Resolution of the Plenum of the Supreme Court of the Russian Federation No. 48 of November 30, 2017 «On judicial practice in cases of fraud, embezzlement and misuse» clarifies that «within the meaning of art. 159.6 of the Criminal Code of the Russian Federation interference in the functioning of means of storage, processing or transmission of computer information or information and telecommunications networks is recognized as the purposeful impact of software and (or) software and hardware on servers, computer equipment, including portable – laptops, tablet computers, smartphones equipped with appropriate software, or on information and telecommunications networks...» (paragraph 20). In fact, «if the theft of someone else's property ... is carried out by spreading deliberately false information in information and telecommunications networks,

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[26] On signing the Convention on Cybercrime: Order of the President of the Russian Federation of November 15, 2005 No. 557-rp // Code of Law of the Russian Federation, 2005, No. 47, Article 4929

[27] See: Brenner S. W. Cyberthreats and the Decline of the Nation-State. London: Routledge. 2014. 182 p.; Justice J. W., Bricker B. J. Hacked: Defining the 2016 Presidential Election in the Liberal Media / J. W. Justice // Rhetoric and Public Affairs. 2019. Vol. 22, iss. 3. Pp. 389-420. DOI: 10.14321/rhetpublaffa.22.3.0389

[28] See: D'Aspremont J. Cyber Operations and International Law: An Interventionist Legal Thought // Journal of Conflict and Security Law. 2016. Vol. 21, iss. 3. Pp. 575-593. DOI: 10.1093/jcsl/krw022; Kettemann M. C. Ensuring Cybersecurity through International Law // Revista Espanola de Derecho Internacional. Vol. 69, iss. 2. Pp. 281-290

[29] Supra note 24. P. 67

[30] Supra note 11. P. 238

[31] Chernenko, T. G. The Qualification of the Aggregate of Crimes [Kvalifikatsiya sovokupnosti prestuplenii] // Bulletin of Omsk University. Series: Law [Vestnik Omskogo universiteta. Seriya: Pravo.]. 2014. No. 1 (38). Pp. 148-162. (in Russian) P.151

[32] Engelhardt, A. A. On Understanding of Fraud in the Field of Computer Information // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. 2016. No. 8. Pp. 84-90. (in Russian) P.90

[33] See: Arnold N., Mahoney W., Derrick D., Ligon G. & Harms M. Feasibility of a Cyber Attack on National Critical Infrastructure by a Non-State Violent Extremist Organization // Journal of Information Warfare. 2015. Vol. 14, iss. 1. Pp. 84-100

including the Internet (for example, the creation of fake websites...), then such fraud should be qualified under Article 159, and not 159.6 of the Criminal Code of the Russian Federation» (paragraph 21).

The legal logic developed in the framework of the fight against economic cybercrimes has not found application in the practice of protecting other objects of criminal legal protection. In the Resolution of the Plenum of the Supreme Court of the Russian Federation of December 25, 2018 No. 46 «On certain issues of judicial practice in cases of crimes against the constitutional rights and freedoms of man and citizen...» it is noted that the dissemination of information about a person's private life consists in communicating (disclosing) it to one or more persons orally, in writing or in any other form and by any means (in particular, by transmitting materials or posting information using information and telecommunications networks, including the Internet) (paragraph 3), but the dissemination of information of limited access in a computer network does not constitute a special crime. Similar are the provisions of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 11 of June 28, 2011 «On judicial Practice in criminal cases of extremist crimes», which notes the possibility of bringing to criminal responsibility for public calls to carry out extremist activities on the Internet on the same legal grounds that were developed to bring to justice journalists who abuse freedom of speech (Part 2 of Article 280 of the Criminal Code of the Russian Federation). Provisions of the Federal Law of July 25, 2002 No. 114-FZ «On Countering extremist activities» is interpreted by the judicial authorities on the basis that the Internet, including websites, blogs and forums, is a private example of a public space.

The Resolution of the Plenum of the Supreme Court of the Russian Federation No. 16 of December 4, 2014 «On judicial practice in cases of crimes against sexual inviolability and sexual freedom of the individual» notes that «such actions may also be recognized as depraved, in which there was no direct physical contact with the body of the victim, including actions committed using the Internet or other information and telecommunications networks» (paragraph 17).

Resolution of the Plenum of the Supreme Court of the Russian Federation No. 14 of April 26, 2007 «On the practice of consideration by courts of criminal cases on Infringement of copyright, related, inventive and patent rights, as well as on the illegal use of a trademark» in the spirit of Article 10 of the Budapest Convention recognizes the possibility of committing crimes against intellectual property in computer networks (paragraph 4), but does not contain special rules and explanations for this type of cybercrimes.

The Resolution of the Plenum of the Supreme Court of the Russian Federation of June 15, 2006 No. 14 «On judicial practice in cases of crimes related to narcotic drugs, psychotropic, potent and toxic substances» (as amended on May 16, 2017) does not pay due attention to the threat of the distribution of narcotic drugs through computer communication networks and the promotion of the recreational use of psychoactive substances. There is every reason to believe that the threats posed by cybercrime are not fully assessed by law enforcement agencies, and this is happening not only in the Russian Federation, but also in other countries.

The experience of industrially developed countries demonstrates the technological dependence of all legislative initiatives in the online world[34]. Through legislative policies, countries such as Japan, South Korea, Australia, the Netherlands, and Germany are implementing harm reduction strategies (including from prohibitive measures) based on public-private partnerships to protect the «digital ecosystem»[35]. At the level of the European Union, national criminal legislation establishing responsibility for crimes in computer networks[36] is being harmonized, but «nonlegal factors such as national security, politics, the economy and public opinion encourage the spontaneous implementation of the European legal framework»[37]. The imperfection of European legislation is reflected in the high level of «shadow fraud», indicating that «the assessment of crime prevention based solely on police statistics may be inadequate».[38]

The Computer Misuse Act of 1990 is in force in the UK, which is aimed at combating cybercrime and is in many ways similar to Russian criminal law, but has certain specifics. On the one hand, the protection of computer systems and technologies from unauthorized access or modification always determines the object of encroachment of crimes that are associated with the use of computer technologies[39]. On the other hand, it is obvious that unlike Russian criminal law, which protects computer systems from harm, British statutes are initially more focused on protecting the rights of users of computer networks. The British lawmaker explains that the most common elements of cybercrimes involve unauthorized access to computer materials or unauthorized modification of computer programs and include: (1) hacking, including access to social network accounts and email passwords; (2) phishing – abuse of the trust of users in order to obtain passwords, security

34 See: Gercke M. Europe's Legal Approaches to Cybercrime // ERA Forum. 2009. Vol. 10. P. 409-420. DOI:10.1007/ S12027-009-0132-5

35 Dupont B. Bots, Cops, and Corporations: on the Limits of Enforcement and the Promise of Polycentric Regulation as a Way to Control Large-Scale Cybercrime // Crime, Law and Social Change. 2017. Vol. 67, iss. 1. Pp. 97. DOI: 10.1007/s10611-016-9649-z

36 See: Buono L. Fighting Cybercrime between Legal Challenges and Practical Difficulties: EU and National Approaches // ERA Forum. 2016. Vol. 17. Pp. 343-353. DOI: 10.1007/s12027-016-0432-5

37 Calderoni F. The European Legal Framework on Cybercrime: Striving for an Effective Implementation // Crime, Law and Social Change. 2010. Vol. 54, iss. 5. P. 339. DOI: 10.1007/s10611-010-9261-6

38 Kemp S., Miro-Llinares F., Moneva A. The Dark Figure and the Cyber Fraud Rise in Europe: Evidence from Spain// European Journal on Criminal Policy and Research. 2020. Vol. 26. DOI: 10.1007/s10610-020-09439-2

39 Karamnov, A. Yu., Dvoretsky, M. Yu. UK Legislation on Crimes in the Field of Computer Information [Zakonodatel'stvo Velikobritanii o prestupleniyakh v sfere komp'yuternoi informatsii] // Socio-Economic Phenomena and Processes [Sotsial'no-ekonomicheskie yavleniya i protsessy]. 2013. № 8 (54). Pp. 164-167. (in Russian)

information and personal data; (3) malware, including ransomware of various kinds[40], distributed denial of service attacks (DDOS) on websites, which are also accompanied by extortion[41].

In the United States of America, at the federal level, cybercrimes, in the sense of Russian criminal law, correspond most to the elements of crimes related to illegal access to communications and disruption of their normal operation (18 U.S.C. § 2701-2703), as well as the elements of causing damage to communication lines, stations or systems (18 U.S.C. § 1362). Special criminal protection of computer networks in the United States is carried out at the state level. Of particular importance for the international information space is the protective norm of art. 502 of the California Criminal Code[42], since the commercial Internet infrastructure is located in Silicon Valley under the jurisdiction of the state[43].

Federal law enforcement practice in the United States has long been based on the high public danger of cybercrime, but this initially concerned the protection of all technological systems of electrical communication (The Omnibus Crime Control and Safe Streets Act of 1968 [Wiretap Act] and Berger v. New York, 388 U.S. 41 (1967) Katz v. United States, 389 U.S. 347 (1967)). From United States v. Sutcliffe[44] explicitly follows the intention of the American judiciary to apply the logic of the analogy of the Retail Networks and Electrical Communications Act to the protection of information in computer networks, given that Congress has the necessary authority to regulate the Internet, as well as other tools and channels of interstate commerce (United States v. Hornaday, 392 F. 3d 1306, 1311).

Based on the logic of the economic nature of the Internet, in the United States, the most typical composition of cybercrimes is fraud associated with the dissemination of computer information of various kinds (18 U. S. C. § 1028, § 1028A, § 1029, § 1030, § 1037), special attention is paid to misleading domain names (18 U.S.C. § 2252B), as well as «words or digital images on the Internet» (18 U.S.C. § 2252C). The dissemination of prohibited information through computer networks in the United States is prosecuted on general grounds (18 U.S.C. 2252A), the same logic applies to criminal prosecution for copyright infringement in computer networks (17 U.S.C. § 506, 18 U.S.C. § 2319). The American legislator intentionally protects the physical communication infrastructure with the same legislative norms as the software, reasonably believing that the sanction (up to ten years in prison) is associated with an attempt to damage those computer systems at the national level that are particularly important for the state (in Russia, such systems are characterized as critical information infrastructure). Approaches to cybercrime in Russian and foreign criminal law largely coincide, but some fundamental issues are resolved taking into account the peculiarities of the sources of national law.

A discursive analysis of legislation and court decisions shows that in the context of digital transformation, it is necessary to protect a wide range of interests of high-tech corporations and their clients from criminal encroachments by criminal structures located within the state apparatus, the business community and public organizations. At the same time, American law enforcement practice demonstrates that the dissemination of information through computer communication networks, being a way of committing various crimes, is usually carried out by a subject who has access to official information, and should be qualified taking into account the motives of the criminal and the real consequences of the offense, without special attention to a specific method of obtaining access to classified information.

Well-known American lawyer Jeffrey L. Fisher, acting as a lawyer for Nathan Van Buren, a former police officer of the State of Georgia, who provided information from the police database to a friend for 6 thousand US dollars, rightly noted that the decision in the case of United States v. Van Buren[45] makes the violation of the usual restrictions on the processing of digital data a serious federal crime. The US Supreme Court, considering the question of whether real computer hacking is necessary for the prosecution of a computer crime, concluded that the actions constitute a crime if illegal access to computer information was obtained, the method of obtaining access is not essential for the qualification of the act. In turn, the case of Riley v. California[46] demonstrates the need to respect the interests of citizens in computer networks on the part of the state and especially protect the privacy of private life, given that everything «digital is different from the physical»[47]. US case law shows how «Supreme Court decisions have echoes far beyond the specific parties involved, even beyond the judicial system.»[48]

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[40] Nasution M. D. T. P., Siahaan A. P. U., Rossanty Y., Aryza S. The Phenomenon of Cyber-Crime and Fraud Victimization in Online Shop // International Journal of Civil Engineering and Technology. 2018. Vol. 9, iss. 6. Pp. 1584-1585

[41] The Threat from Cyber Crime [Online source]. URL: https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/cyber-crime (date of access: 22.02.2021)

[42] California Penal Code § 502. [Online source]. URL: http://leginfo.legislature.ca.gov/faces/codes_ displaySection.xhtml?lawCode=PEN&sectionNum=502 (date of access: 01.03.2021)

[43] Skinner C. P. Cybercrime in the Securities Market: Is U.C.C. Article 8 Prepared? // North Carolina Law Review Addendum. 2012. Vol. 90. Pp. 132-157. DOI: 10.2139/ssrn.1952955

[44] United States of America, Plaintiff-Appellee v. Steven William Sutcliffe, Defendant-Appellant, No. 04-50189, Decided: October 11, 2007 [Online source]. URL: https://caselaw.findlaw.com/us-9th-circuit/1166432.html (date of access: 01.03.2021)

[45] United States v. Van Buren. No. 18-12024 (11th Cir. 2019) [Online source]. URL: https://law.justia. com/cases/federal/appellate-courts/ca11/18-12024/18-12024-2019-10-10.html (date of access: 01.03.2021)

[46] Supreme Court of the United States Syllabus. Riley v. California [Online source]. URL: https://www. supremecourt.gov/opinions/13pdf/13-132_8l9c.pdf (date of access: 01.03.2021)

[47] Faculty on Point: Prof. Jeffrey Fisher on Digital Privacy and the Riley Decision [Online source]. URL: https://law.stanford.edu/directory/jeffrey-l-fisher/ffslsnav-featured-video (date of access: 01.03.2021)

[48] Fisher J. L. A Clinic's Place in the Supreme Court Bar // Stanford Law Review. 2013 (2011). Vol. 65, iss. 1. P. 137. DOI: 10.2139/ssrn.1921430

After the idea of expanding the ability of US law enforcement agencies to combat foreign-registered websites, online copyright infringement, and illegal trafficking of counterfeit goods on the Internet came to a standstill in 2012, and the SOPA (Stop Online Piracy Act – the Anti-Piracy Law) and the PIPA (Protect IP Act) were rejected, and it became clear that the economic interests of corporations are subordinated to the system-forming principles of a virtual environment where freedom of speech and innovation dominate, and any Internet censorship will be met with a strong protest from the online community[49].

Progressive Russian studies confirm that «the state is obliged not to ignore the «online problems», but to deal with them closely, otherwise private companies – manufacturers of online worlds will begin to set the «rules of the game».»[50] In the online space, deception does not become the norm, but the ways of disguising fraud technologies as creative solutions, as well as information warfare, acquire the character of a socio-political international technology[51]. On the one hand, the technical understanding of the fundamental differences between the actions of creative digitalization guerrillas and classic crimes of an extremist nature reflects the need to develop special norms to ensure the rule of law in the global information space[52]. On the other hand, the danger of creative projects is only indirectly related to their technical implementation, since online reality can carry unpredictable socio-psychological and economic threats[53].

Cybercrime, based on the technological features of the implementation of the criminal plan, can cover an indefinite range of persons – recipients of potentially dangerous messages[54]. For high-tech industries, the general rules of criminal law are not always acceptable. In Russian legal science, there is also an understanding that «the existing legal mechanisms are not always feasible for Internet relations»[55] and, in particular, the legislation does not effectively protect the rights of consumers of computer software[56]. It is obvious that cybercrime is embedded in a variety of organizational structures and is focused on making a profit by violating the rights of the general population[57]. Providing access to potential victims of crime is often carried out by creating various social and technological networks on the Internet[58], empirical data within which is quite difficult to collect, and the unknown, indeed, can generate panic around an unprotected Internet audience[59].

Some high-profile cybercrimes did not harm the critical information infrastructure, and some serious serious crimes were not solved, for example, the creators of the WannaCry virus were never exposed and brought to justice, which means that their economic or political motives were not established. The reasonable qualification of cybercrimes largely depends on the objective side of their composition. Two cybercrimes similar to the object of encroachment can be distinguished by a fundamentally different public danger. For example, an American student, Varun H. Sarja, hacked into several computers at an educational institution, changed his grades and was sentenced to one and a half years of probation[60]. At the same time, the British hacker Alex Bessell was sentenced to two years in prison for a formally similar crime – systematic cyber attacks, carrying out which he earned more than 50 thousand pounds[61]. Both cases demonstrate the existence of significant

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49 See: Hacking Politics: How Geeks, Progressives, the Tea Party, Gamers, Anarchists and Suits Teamed up to Defeat SOPA and Save the Internet / D. Moon, P. Ruffini, D. Segal (eds). OR Books. 2013. 316 p.; Kapczynski A. Intellectual Property's Leviathan // Law and Contemporary Problems. 2015. Vol. 77, iss. 4. Pp. 131-145

50 Baturin, Yu. M., Polubinskaya, S. V. What Makes Virtual Crimes Real [Chto delaet virtual'nye prestupleniya real'nymi] // Proceedings of the Institute of State and Law of the Russian Academy of Sciences [Trudy Instituta gosudarstva i prava Rossiiskoi akademii nauk]. 2018. V. 13. No. 2. Pp. 9-35. (in Russian) P.30

51 Kirilenko V.P., Alekseev G.V. Po. cit. Supra note 8, 18

52 See: Taylor R. W., Fritsch E. J., Liederbach J. Digital Crime and Digital Terrorism. New York: Prentice Hall Press, 2014. 416 p

53 Baturin Yu.M., Polubinskaya S.V. Op.cit. Supra note 50

54 See: Cooper M. How Cyber Crime Damages Lives // ITNOW. 2020. Vol. 62, iss. 1. Pp. 36-37. DOI: 10.1093/ itnow/bwaa016; De Silva S. Cyber Crime and the Law // ITNOW. 2016. Vol. 58, iss. 4. Pp. 28-29. DOI: 10.1093/ itnow/bww101; Dalgaard-Nielsen A. Supra note 17; Walden I. Supra note 17

55 Zharova, A. K. Routing and IP to Ensure the Legal Regulation of Internet Relations [Marshrutizatsiya i IP dlya obespecheniya pravovogo regulirovaniya internet-otnoshenii] // Bulletin of the Russian State Humanitarian University. Series «Informatics. Information Security. Mathematics» [Vestnik RGGU. Seriya «Informatika. Informatsionnaya bezopasnost'. Matematika»]. 2019. No. 2. Pp. 32-42. DOI: 10.28995/2686-679X-2019-2-32-42. (in Russian) P.40

56 See: Zharova A. Ensuring the Information Security of Information Communication Technology Users in Russia // International Journal of Cyber Criminology. 2019. Vol. 13, iss. 2. Pp. 255-269

57 See: Leukfeldt E. R., A. Lavorgna, E.R. Kleemans. Organised Cybercrime or Cybercrime that is Organised? An Assessment of the Conceptualisation of Financial Cybercrime as Organised Crime // European Journal on Criminal Policy and Research. 2017. Vol. 23, iss. 3. P. 287-300. DOI:10.1007/s10610-016-9332-z; Broadhurst R. G., P. Grabosky, M. Alazab. Supra note 5

58 Ivantsov, S. V., Borisov, S. V., Uzembaeva, G. I., Muzychuk, T. L., Tishchenko, Yu. Yu. Actual Problems of Improving the System of Measures for Criminological Prevention of Extremist Crimes Committed Using Information and Telecommunication Networks [Aktual'nye problemy sovershenstvovaniya sistemy mer kriminologicheskogo preduprezhdeniya prestuplenii ekstremistskoi napravlennosti, sovershaemykh s ispol'zovaniem informatsionno- telekommunikatsionnykh setei] // Russian Journal of Criminology [Vserossiiskii kriminologicheskii zhurnal]. 2018. T. 12, No. 6. Pp. 776-784. DOI: 10.17150/2500-4255.2018.12(6).776-784 (in Russian)

59 See: Lavorgna A. Cyber-Organised Crime. A Case of Moral Panic? // Trends in Organized Crime. 2019. Vol. 22, iss. 4. Pp. 357-374. DOI: 10.1007/s12117-018-9342-y.

60 Former University of Kansas Student Gets Probation for Changing Failing Grades to 'A' Via Hacking [Online source]. URL: https://www.indiawest.com/news/global_indian/former-university-of-kansas-student-gets-probation-for-changing-failing/article_07766628-7f0d-11e8-8d2a-3bf0c388ace0.html (date of access: 20.02.2021)

61 Hacker Alex Bessell Jailed for Cyber Crime Offences [Online source]. URL: https://www.bbc.com/news/ uk-england-42733638 (date of access: 20.02.2021)

problems in the court's assessment of the real damage caused by illegal actions in computer networks. The criminal prosecution of US Senator Anthony D. Weiner for indecent acts in social networks in relation to a minor victim demonstrated that health problems, assistance to the investigation and good behavior can lead to an actual sentence of one and a half years of compulsory treatment with subsequent measures of additional punishment[62].

The practice of law enforcement confirms that when qualifying cybercrimes and assigning penalties for their commission, a legal assessment of the consequences of the offense is carried out, that is, online crimes are considered by the court as crimes with material composition, while the degree of guilt of the online delinquent may be characterized by indirect intent, and the methods of committing crimes will be increasingly influenced by artificial intelligence[63]. The motives for the destruction of virtual infrastructure can be dictated by the logic inherent in international crimes against cultural heritage, and cover both the Herostratus complex and extremist beliefs that lead to discrimination[64].

The presumption of innocence of all participants in online communication is of great importance in the system of assessing the public danger of cybercrime, but it is common for subjects who commit serious crimes in the online world to disguise their actions as the sale of goods, services and intellectual rights, as well as under voluntary donations from citizens for the development of their projects. When identifying cyberdelicts, the grounds for doubts about the legality of the functioning of Internet sites can serve as clear signs of the presence of the right of violation, as well as complaints from users of a network resource about the violation of their subjective rights. Obviously, it is the victims complaints that can reveal fraud, propaganda of extremism and other cybercrimes, while revealing the modus operandi of the virtual delinquent. Fraudulent websites, online casinos, and death groups on social networks often use identical techniques to phish personal data and gain control over the actions of the victim of the crime. There is every reason to believe that the organized criminal communities that exist in the virtual space, acting out of selfish and extremist motives, sooner or later become involved in the struggle for power and political influence, abusing the trust of Internet users.

Conclusion. Digital transformation expands the possibilities of active subjects of legal relations in all spheres of modern society, but the introduction of information technologies in the national economy in practice often causes serious social problems. On the one hand, in the process of digitalization, there are many new opportunities for creativity, organizing communication, modeling virtual reality and implementing ambitious technical projects. On the other hand, as a result of digital transformation, new aspects in the activities of criminal communities are also emerging. First, criminal communities use information networks to recruit new members to their ranks and motivate individual members of society to take actions that contribute to the achievement of criminal goals. Secondly, a significant part of the proceeds from fraud in the field of computer information for various reasons of a purely criminal nature can be directed to the financing of extremist activities. Thirdly, there is a threat of criminalization of cyberspace, where organized crime is developing, criminal network resources are flourishing, such as: information systems for finding performers of criminal services and paying for them, resources for providing access to classified and counterfeit information, sites for selling fake and low-quality goods, online casinos and various fraudulent political projects that abuse the trust of citizens.

Substantive criminal law is significantly lagging behind in its development from those criminal schemes that are actively developed and implemented in the life of the network community. It is necessary to introduce new types of additional criminal penalties that can restrict the rights of citizens to participate in online communication, including bans: on the use of social networks, on the creation of network sites, on the use of numbering resources of the global network. In cases where criminal activity in the information space is of a cross-border nature, the harmonization of criminal legislation and international police cooperation become critical elements of information security.

The system for assessing the public danger of cybercrime should be based on taking into account the harm caused to the legally protected interests of all users of network resources, as well as on the timeliness of unmasking the criminal intent by law enforcement agencies. The central element of the critical information infrastructure of each state remains the user of computer systems, and it is the user who is least protected by criminal law in the process of digital transformation of all spheres of society.

Given the fact that «there is a lot of theoretical reasoning about the fear of sanctions that motivates people not to violate legal obligations,»[65] it is obvious that the digital transformation is changing the perception of the threat of punishment by most users of computer networks. The energy of virtual things (the Internet of things)[66] and the commodification of computer communication have a significant impact on the activity of criminal structures, which in the new conditions seek to solve their own criminal and political problems with the help of digital technologies in the virtual space of computer networks. The

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62 Anthony Weiner Released from Prison After Serving 18 months for Sexting Teenager [Online source]. URL: https://www.nytimes.com/2019/05/14/nyregion/anthony-weiner-prison-release.html (date of access: 20.02.2021)

63 See: Begishev I.R., Khisamova Z.I. Op.cit. Supra note 4; Van der Wagen W. From Cybercrime to Cyborg Crime: Botnets as Hybrid Criminal Actor-Networks // British Journal of Criminology. 2015. Vol. 55, iss. 3. Pp. 578-595. DOI: 10.1093/bjc/azv009

64 See: Brosche J., Legner M., Kreutz J., Ijla A. Heritage under Attack: Motives for Targeting Cultural Property During Armed Conflict // International Journal of Heritage Studies 2017. Vol. 23, iss. 3. Pp. 248-260. DOI: 10.1080/13527258.2016.1261918

65 See: Nuotio K. A Legitimacy-Based Approach to EU Criminal Law: Maybe We Are Getting There, After All // New Journal of European Criminal Law. 2020. Vol. 11, iss. 1. P. 24. DOI: 10.1177/2032284420903386

66 See: Mylrea M. Smart Energy-Internet-of-Things Opportunities Require Smart Treatment of Legal, Privacy and Cybersecurity Challenges // The Journal of World Energy Law & Business. 2017. Vol. 10, iss. 2. Pp. 147-158. DOI: 10.1093/jwelb/jwx001

growing opportunities for the use of artificial intelligence in the interests of criminal communities emphasize the importance of adjusting the criminal policy of developed countries in the direction of protecting the ideals of humanism and protecting the status of the individual, who is increasingly vulnerable in the competition between human and machine intelligence. There is no doubt that criminal law mechanisms are necessary to prevent digital slavery and the devaluation of human labour.

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Comparative Characteristics of the Constitutional and Legal Status of the Chief Government Officials of the Constituent Entities of the Russian Federation – Moscow and St. Petersburg

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ABSTRACT
The article provides a theoretical and comparative analysis of the constitutional and legal status of the chief government officials of the constituent entities of the Russian Federation – the cities of Moscow and St. Petersburg. The author highlighted the main elements of the constitutional and legal status of the chief government official of a constituent entity of the Russian Federation, the classification of which became the basis for the proposed methodology for a comparative analysis of the statuses of the chief government officials of cities of federal significance (Moscow and St. Petersburg) in the context of regional norms.
A comparative analysis based on the proposed methodology led to conclusions about the similarities and differences in the constitutional and legal statuses of the mayor of Moscow and the governor of St. Petersburg.
Keywords: comparative characteristics, constitutional and legal status, the chief government official of a constituent entity of the Russian Federation, mayor of Moscow, governor of St. Petersburg

Introduction.

The issues of formation and implementation of the constitutional and legal status of the chief government officials of the constituent entities of the Russian Federation (regions[1]), as well as other public law establishments, seem to be relevant at all stages of the constitutional development of Russian statehood, since the problems of ensuring a balanced regulation of local authorities in accordance with the general provisions of the central government belong to the most important state problems in the entire history of the Russian state. At present, such problems are caused by pragmatic implementation of the principle of delimitation of powers and subjects of jurisdiction between the authorities in order to maintain the constitutional unity of the system of state power of the Russian Federation[2].

The course taken at the end of the last century for the decentralization of federal power with the principles of non-interference in local affairs has changed in the direction of a balanced federal influence in relation to the regional authorities of the constituent entities of the Russian Federation. This is due to the desire to develop in Russia an optimal model for regulating a hierarchical system of power that ensures territorial integrity, the unity of the state along with the independence and self-sufficiency of Russian regions, which requires the development of a two-tier system of state power regulation with clear instruments for interaction between federal and regional authorities[3].

As a result of many years of efforts by the President of the Russian Federation V.V. Putin and his associates, a noticeable strengthening of the system of central government took place, but the problem of balanced interaction of the federal center with the territories whose interests are represented by the chief government officials of the constituent entities of the Russian Federation remains topical due to insufficient constitutional regulation of certain issues. The urgency of this problem is confirmed by the content of the status of the considered subject of state power, since in the norms of the Constitution of the Russian Federation[4] and constitutional federal laws there is no clear system of elements

[1] In the text of the article, «region» is used in the meaning of «constituent entity of the Russian Federation»
[2] Andrichenko, L. V. Division of Powers between the Authorities of Different Territorial Levels: Issues of Centralization and Decentralization// Public Administration Issues.2013. No. 4. Pp. 37-58
[3] Orlova, E. A. Constitutional and Legal Status of the Chief Government Official of a Constituent Entity of the Russian Federation: Dis. abstract ... Cand. Jurid. Sciences: 12.00.02 / E. A. Orlova. Moscow, 2006. 24 p.
[4] The Constitution of the Russian Federation (adopted by nationwide vote on 12.12.1993 with amendments, approved during the all-Russian vote on 01.07.2020) [Online source]. URL: http: //www.pravo.gov.ru, 07.04.2020 (date of accession: 30.07.2020).

of the constitutional and legal status of the chief government official of the constituent entity of the Russian Federation and legal mechanisms for delimiting the corresponding powers with the federal center[5].

Despite the equality of the constituent entities of the Russian Federation, proclaimed in art. 5 of the Constitution, there is a different content of powers and other elements of the statuses of chief government officials of the constituent entities of the Russian Federation, which are regulated by the corresponding constitutional and statutory acts of the constituent entities of the Russian Federation. Repeated changes in the status norms of chief government officials of the constituent entities of the Russian Federation make it difficult to effectively and consistently implement the relevant provisions of the constitutions and charters of the constituent entities of the Russian Federation.

However, the content of the status of the chief government official in a constituent entity of the Russian Federation significantly affects the development of the region, ensuring the well-being of its population, the state of law, order and legality[6], all of which determines the importance of expanding Part 3 of Art. 77 of the Constitution of the Russian Federation, which only defines some restrictions within the framework of the constitutional and legal status of the chief government official of a constituent entity of the Russian Federation and a blanket norm on additional requirements of the federal law to this status.

A comparative analysis of the constitutional and legal status of the chief government official in the cities of Moscow, St. Petersburg shows the differences and peculiarities of developed Russian cities of federal significance, reflecting the most significant problems of the development and implementation of these statuses due to differences and gaps in the constitutional and statutory sphere of legal relations, which also determines the topic of this article.

Thus, the relevance and importance of the comparative characteristics of the constitutional and legal status of the chief government officials of the constituent entities of the Russian Federation – the cities of Moscow, St. Petersburg is determined by the following factors: 1) the need to ensure a balanced regulation of powers of the Russian authorities at the local level and in the center based on the principles of delimitation and delegation of powers using clear instruments of interaction between federal and regional authorities (the factor of balanced regulation);

2) insufficient constitutional regulation of certain issues of the constitutional and legal status of the chief government official of a constituent entity of the Russian Federation both in the provisions of the Constitution of the Russian Federation and in the constitutional and statutory norms of regional legislation (the factor of gap regulation); 3) the importance of establishing differences, gaps in the constitutional and statutory sphere of legal relations on the example of the statuses of the chief government officials in Moscow and St. Petersburg (the factor of comparing the statutory law of the two capitals).

The main elements of the constitutional and legal status of the chief government official of a constituent entity of the Russian Federation

Starting the analysis of the constitutional and legal statuses of the chief government officials of the cities of federal significance – Moscow and St. Petersburg, it is advisable to summarize the main content,a general list of structural elements of the constitutional and legal position of the chief government official of a constituent entity of the Russian Federation (hereinafter also the head of the region), which are the subject of many studies by Russian and foreign lawyers. For example, A.N. Kail[7]defined the concept of the general legal status of the chief government official of a constituent entity of the Russian Federation as the regulated by legal norms position of such a person, which is characterized by the corresponding elements: the name of the position; the competence of the head of the region with the subject of competence, basic rights, duties; restrictions for the head of the region; guarantees of the chief government official; his/her responsibility; the relationship of the head of the region with other institutions of authority and with the population of a constituent entity of the Russian Federation.

This definition clearly identifies the elements of the general legal status of the chief government official of a constituent entity, which also form the constitutional and legal status.In particular, V.A.Marshalova outlined the concept of the constitutional and legal status of the chief government official of a constituent entity of the Russian Federation (president of the republic) as a relatively stable set of features established by constitutional and legal norms that determine the role of the head of the region as a government body in the mechanism for the implementation of democracy, and the corresponding functioning specifics of such a government body, which includes certain status elements (name of the highest position, powers, content of guarantees, limits of responsibility, functions, competence, general legal capacity, procedure for replacement and characteristics of the position)[8].

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5 Urusova, I. O. The Constitutional and Legal Status of Chief Government Officials of the Constituent Entities of the Russian Federation and their Role in the System of Federal and Regional Authorities: Dis. abstract... Cand. Jurid. Sciences: 12.00.02 / I. O. Urusova. Moscow, 2014. 24 p.

6 Ishekov, K. A. Implementation of Constitutions and Statutes of the Constituent Entities of the Russian Federation by State Authorities: Constitutional and Legal Research: Dis. abstract... Doct. Jurid. Sciences: 12.00.02 / K. A. Ishekov. Saratov, 2015. 40 p.

7 Kail, A. N. The Constitutional and Legal Status of the Chief Government Official of the Constituent Entity of the Russian Federation in the System of Government Bodies: on the Example of the Region, Territory: Dis. abstract... Cand. Jurid. Sciences: 12.00.02 / A. N. Kail. Saratov, 2004. 22 p.

8 Marshalova, V. A. Evolution of the Constitutional and Legal Status of the President of the Republic within the Russian Federation: Dis. abstract... Cand. Jurid. Sciences: 12.00.02 / V. A. Marshalova. Kazan, 2007. 26 p

This complex definition logically characterizes the chief government officialas a body of regional government with special functions, reflects the complex nature of the elements of the considered status, which are associated with the position of the head of the region, but does not take into account the differences in legal sources (the Constitution of the Russian Federation, federal legislation, constitutional norms) and the peculiarities of the legal status of a constituent entity of the Russian Federation as a public law entity.

The dissertation research by N. V. Mashyanov[9] defines the signs of the status of the chief government official as an institutional component of the system of Russian authorities, which characterize the place of the head of the region in the system of authority vertically and horizontally; implement the system-wide principles of structure, integrity, hierarchy, relativity of ties with other participants in power relations, as well as additional principles of legality, democracy, responsibility, consistency in the implementation of goals and objectives; are distinguished by the presence of arbitration, guarantee and general representative powers, as well as the establishment of organizationally formalized institutions of the government or a regional cabinet of ministers, the corresponding prime minister (chair of the government), vice governor (vice president) with the corresponding constitutional and statutory statuses.

That is, N.V. Mashyanov logically substantiated the structural and systemic aspects that are indirectly related to the analyzed constitutional and legal status of the chief government official of the region and characterize the institutional nature of his/her powers, but do not reflect differences in legal sources and peculiarities of the legal status of a constituent entity of the Russian Federation as a public law entity.

The work of I.O. Urusova[10] defines the following elements of the examined constitutional and legal status:

- a formal element of the procedure for obtaining the authority of the chief government official;
- an element of competence in the form of powers of the chief government official in the field of state activity;
- an element of educational qualification in the form of requirements for education and work experience in the field of public administration, which should ensure a sufficient professional level of a candidate for the most responsible post of the regional state authority system and appropriate guarantees of the quality of activity in such a post;
- an element of responsibility to the population in the corresponding territory of the constituent entity of the Russian Federation;
- an element of guarantee in the form of a special mechanism to hold the chief government official accountable.

The content of these and other elements of the status under consideration is presented by I.O. Urusova with a clearer list of status elements with additional features than in the works of A.N. Kail, V.A. Marshalova, and the work defines main peculiarities of the constitutional and legal status of the chief government official of the constituent entity of the Russian Federation but also does not take into account the differences in legal sources and features of the legal status of the constituent entity of the Russian Federation as a public law entity.

Along with this, it is worth pointing out the theses of M.V. Demidov[11] on the complex composition of the powers of the head of the region and on the exclusion of the chief government official from the system of executive power, since the current legislation forms the status of the head of the region as the head of the entire system of executive regional power and, at the same time, the highest collegial body[12].At the same time, the position of the chief government official of the constituent entity of the Russian Federation is separated from the position of the head of the supreme executive body of the region, although the content of their statuses is practically the same[13].

Regarding the complex nature of the powers of the head of the region, the Constitutional Court of the Russian Federation in its resolutions[14] gives an interpretation of the interrelated norms of parts 1, 2 of art. 19, part 1 of art. 77, part 4 of art. 78, parts 1, 2 of art. 80 of the Constitution of the Russian Federation, from the content of which there follows: first, the direct subordination of the chief government official of the constituent entity of the Russian Federation to the President of the Russian Federation, who, as the head of state, must ensure the coordinated functioning of the system of all bodies of Russian

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[9] Mashyanov, N. V. The Chief Government Official (Head of the Supreme Executive Body) of the Constituent Entity of the Russian Federation in the System of State Power: the Main Constitutional and Legal Characteristics: Dis. abstract ... Cand. Jurid. Sciences: 12.00.02 / N. V. Mashyanov. Chelyabinsk, 2007. 23 p.

[10] Urusova, I. O. The Constitutional and Legal Status of Chief Government Officialsof the Constituent Entities of the Russian Federation and their Role in the System of Federal and Regional Authorities: Dis. abstract... Cand. Jurid. Sciences: 12.00.02 / I. O. Urusova. Moscow, 2014. 24 p.

[11] Demidov, M. V. The Executive Power of the Constituent Entity of the Russian Federation: the Constitutional and Legal Aspect of Its Status// Constitutional and Municipal Law. 2017. No. 1. Pp. 62-65.

[12] Avakyan, S. A. Constitutional Law of Russia. Training course. Tutorial: In 2 volumes, 5th ed., revised. and add. M.: Norma; INFRA-M, 2014. T. 2. 912 p

[13] Pirbudagova, D. Sh., Gadzhialieva, Sh. S., Umarova, N. E. The Chief Government Official of the Constituent Entity of the Russian Federation in the System of Regional Authorities // Law Bulletin of FENU. 2015. Vol. 15. No. 3. Pp. 51-54.

[14] See: On verification of the constitutionality of part 2 of art. 16 of the Law of the Pskov Region «On the protection of population and territories from natural and man-made emergencies» on the request of the Administration of the Pskov region: Resolution of the Constitutional Court of the Russian Federation of 13.05.2004 No. 10-P //Bulletin of the Constitutional Court of the Russian Federation. No. 4. 2004; On verification of the constitutionality of certain provisions of Federal Law «On general principles of organization of legislative (representative) and executive authorities of the constituent entities of the Russian Federation» due to the complaints of a number of citizens: the decree of the Constitutional Court of the Russian Federation of 21.12.2005 No. 13-P // Bulletin of the Constitutional Court of the Russian Federation. No. 1.

power; secondly, the participation of the head of the region not only in contacts related to the activities of the corresponding constituent entity of the Russian Federation, but also in general federal relations, participation in which is determined by federal laws and other regulatory legal acts of federal authorities.

In this regard, Z.T. Polatov[15] generalized the dual nature of the analyzed status, since initially the chief government official of a constituent entity of the Russian Federation acts as the head of the executive branch, but he/she can also act as the head of a region if the relevant powers are provided for by the regional legislation of the respective constituent entity. Taking into account this duality, the status of the head of the region is presented by the author as a constituent element of the broader institution of the chief government official of the constituent entity of the Russian Federation, including:

1) an element of status attributes of the chief government official (name, place among other authorities; restrictions on rights, knowledge of the state language; possible terms of holding a position; official attributes, symbols of power; procedural acts; requirements for honor and dignity of the head of the region);

2) an element of competence of the head of the region, which is covered by the content of the subjects of jurisdiction and his/her powers:

- subjects of jurisdiction include the range of public relations, which are determined by the socio-political functions of the chief government official in the spheres of internal and external policy, ensuring human rights, freedoms and coordinated interaction of bodies of state regional authorities;
- the list of powers of the head of the region consists of his rights and obligations established by the Constitution of the Russian Federation, federal laws, constitutional and statutory acts and regional laws, the implementation of which by the chief government official makes it possible to exercise organizational and legal influence on the complex of social relations included in the subject of his jurisdiction;

3) an element of legal responsibility of the head of the region in the form of his obligation to be responsible in accordance with constitutional and legal provisions for the discrepancy between his activities (legally significant actions) and the requirements of these provisions, which is ensured by measures of appropriate state impact.

The indicated three-component content of the constitutional and legal status according to the theses of Z.T. Polatov[16] seems to be more integral, since it reflects the institutional characteristics of the head of the region and the three main structural elements of such a status, consisting of many well-known and justified components. However, even this voluminous concept of the constitutional and legal status of the chief government official does not include any norms on the legal status of a constituent entity of the Russian Federation, on behalf of which the head of the region acts.

The absence in the constitutional and legal status of the chief government official of norms of the legal status of the corresponding constituent entity of the Russian Federation implies that the status norms of the head of state do not necessarily correspond to the provisions of the status of the constituent entity of the Russian Federation, including the norms of competence, since the elements of status attributes and responsibility of the constituent entity of the Russian Federation and the head of the region cannot coincide by virtue of their different legal personality.

Compliance of the subject of jurisdiction, powers of the constituent entity of the Russian Federation and its head of the region is necessary to ensure one of the main functions of the chief government official to represent the interests of his/her constituent entity of the Russian Federation. For comparison, one can point to the established in part 4 of art. 80 of the Constitution of the Russian Federation, the duty of the President of the Russian Federation («head of state») to represent Russia in internal and external relations, as well as to implement constitutional legal personality, sovereign rights and functions of the state with the participation of other authorities and officials[17].

This means that the norms of the competence-based element of the constitutional and legal status of the chief government official of a constituent entity of the Russian Federation must comply with the norms on joint jurisdiction (part 1 of art. 72 of the Constitution of the Russian Federation), the status of a constituent entity of the Russian Federation (art. 66 of the Constitution of the Russian Federation) and other norms on the legal status of the corresponding constituent entity of the Russian Federation.

The analysis of these theses allows us to classify the elements of the constitutional and legal status of the chief government official of the constituent entity of the Russian Federation.

1. A hierarchical group of legislative elements of the constitutional and legal status of the head of the region, including:

- basic elements of the status of the constitutional level, which are determined by part 3 of art. 77, and other norms of the Constitution of the Russian Federation, covering the issues of joint jurisdiction and competence of the constituent entities of the Russian Federation;
- additional elements of the status of the federal level, indicated in art. 18 and other norms of the Law No. 184-FZ[18];

[15] Polatov, Z. T. Problems of the Constitutional and Legal Status of the Chief Government Official of a Constituent Entity of the Russian Federation: Dis. abstract... Cand. Jurid. Sciences: 12.00.02 / Z. T. Polatov. Moscow, 2013. 18 p.

[16] Polatov, Z. T. Problems of the Constitutional and Legal Status of the Chief Government Official of a Constituent Entity of the Russian Federation: Dis. abstract... Cand. Jurid. Sciences: 12.00.02 / Z. T. Polatov. Moscow, 2013. 18 p.

[17] Butusova, N. V. Constitutional and Legal Status of the Russian State: Issues of Theory and Practice. Dis. abstract ... Doct. Jurid. Sciences: 12.00.02 / N. V. Butusova. Moscow, 2006. 49 p.

[18] On the general principles of the organization of legislative (representative) and executive authorities of the constituent entities of the Russian Federation: Federal Law of 06.10. 1999 No. 184-FZ (as amended on 13.07.2020) // Collected Legislation of the Russian Federation. 1999. No. 42. Art. 5005.

- the main elements of the status of the regional level, which are established by the provisions of the constitutional and statutory acts of the corresponding constituent entity of the Russian Federation.

2. A group of structural elements of the constitutional and legal status of the chief government official of a constituent entity of the Russian Federation, determining:

- a formal element of the status attributes of the chief government official and procedures for entering such a position, which forms a formal element of the analysis of the constitutional and legal status;
- an element of competence of the head of the region, which is covered by the subjects of jurisdiction and powers of the corresponding constituent entity of the Russian Federation (competence-based element);
- an element of legal responsibility of the head of the region, the norms of which are enshrined in the Constitution of the Russian Federation, in art. 18 and other norms of Law No. 184-FZ, in the provisions of the constitutional and statutory acts of the corresponding constituent entity of the Russian Federation (the sanctioning element of the analysis of the constitutional and legal status).

Comparison of the constitutional and legal statuses of the mayor of Moscow and the governor of St. Petersburg

The presented classification of the elements of the constitutional and legal status of the head of the region determines the appropriate methodology for the comparative analysis of the statuses of the chief government officials of cities of federal significance (Moscow and St. Petersburg) in the context of the norms of the regional level, which is advisable to carry out according to the following algorithm:

1) the establishment and general analysis of the main elements of the constitutional and legal status, which are regulated by the provisions of the constitutional and statutory acts of Moscow and St. Petersburg by highlighting the status norms of the head of the city of federal significance in the charters and other documents of the region;

2) generalization of the structural elements of the constitutional and legal status of the chief government officials of Moscow and St. Petersburg – formal, competence-based and sanctioning elements;

3) the establishment of similar features and differences, uncertainties and gaps in the content of the constitutional and legal status of the chief government officials of Moscow and St. Petersburg.

That is, it is advisable to carry out a comparative analysis of the constitutional and legal statuses of the mayor of Moscow and the governor of St. Petersburg in three stages: general analysis of sources; highlighting the formal, competence-based and sanctioning elements of the status; establishment of similar and individual characteristics.

In particular, at the first stage of the general analysis of the sources of the constitutional and legal status of the mayor of Moscow, it is worth pointing out that the elements of this status include the main elements of the constitutional and legal status of the mayor of Moscow, regulated by the provisions of the Law of the City of Moscow of 1995 «Charter of the City of Moscow» (hereinafter – the Charter of Moscow[19]), which are defined in Art. 40-49:

1) the basics of the status of the mayor of Moscow as the chief government official of Moscow, which:

- is elected by its residents for five years within the framework of universal, direct, equal rights of voters with secret ballot, the features of which are established by a special law of Moscow[20];
- is a citizen of the Russian Federation who has a passive electoral right, does not have foreign citizenship or other document for permanent residence abroad, who has reached the age of 30;
- takes an oath in the procedure for taking office, including an oath to serve the prosperity of Moscow and the well-being of Muscovites, etc .;
- has state guarantees for the functioning of the mayor of Moscow in accordance with a special law[21];
- is obliged to comply with the prohibitions, restrictions indicated by federal legislation, the laws of Moscow (simultaneously holding the position of a deputy of the State Duma, a member of the Federation Council, a judge, other state positions of the Russian Federation, federal civil service, state positions of a constituent entity of the Russian Federation, municipal service, other prohibitions, restrictions);

2) a list of the main powers of the mayor of Moscow to directly or indirectly resolve issues of socio-economic development of Moscow, city management, and other executive and administrative functions within the extended list of his powers;

3) the legal mechanism for early termination of the powers of the mayor of Moscow in nine cases:

of death; resignation of his own free will; dismissal from office by the President of the Russian Federation due to lack of confidence of the Moscow City Duma and in other cases established by federal law; recognition by the court of incapacity (limited legal capacity); recognition by the court as deceased (missing); entry into force of a conviction; going abroad for

[19] The Charter of the city of Moscow: the Law of the city of Moscow of 28.06. 1995 (as amended on 20.09.2017) // Vedomosti of the Moscow City Duma. No. 4. 1995.

[20] Electoral Code of the City of Moscow: the Law of the City of Moscow of 06.07.2005 No. 38 (as amended on 22.05.2019) //Vedomosti of the Moscow City Duma. 19.08.2005. No. 8. Art. 166.

[21] On the government of Moscow: the Law of the city of Moscow of 20.12.2006 No. 65 (as amended on 26.12.2018) // Vedomosti of the Moscow City Duma, 23.03.2007, No. 2, Art. 385.

permanent residence; loss of citizenship of the Russian Federation, acquisition of another citizenship, other document for foreign residence; recall by Moscow voters in accordance with the laws;

4) conditions for the temporary fulfillment of the duties of the mayor of Moscow;

5) the basics of the competence of the Moscow government, other executive bodies of Moscow, their officials;

6) requirements for the organization of the civil service in Moscow;

7) the basics of regulation of legal acts of the mayor and other bodies, officials of the Moscow executive power;

8) the legal mechanism of interaction between the mayor of Moscow and the Moscow City Duma.

At the same time, according to the Charter of Moscow, additional elements of the constitutional and legal status of the mayor of Moscow are established by the norms of other laws of Moscow:

- the provisions of the special Law of Moscow No. 74 of 2003[22] define the attributive requirements for the official badges of the mayor of Moscow;
- the norms of the Law of Moscow No. 38 of 2005[23] provide for the procedures for electing the mayor of Moscow;
- the provisions of the Law of Moscow No. 43 of 2005[24] regulate the powers and guarantees of persons in government positions in Moscow, including the office of the mayor of Moscow;
- the content of the Law of Moscow No. 65 of 2006[25] includes the powers of the mayor of Moscow related to the appointment and functioning of the Moscow government;
- The norms of the Law of Moscow No. 76 of 2012[26] establish an impressive procedure for recalling the mayor of Moscow, the volume of which is approximately 3-4 times greater than the Charter of Moscow, which reflects the excessive regulation of procedures for recalling the mayor of Moscow.

That is, the main regional elements of the constitutional and legal status of the mayor of Moscow are established by the provisions of the Charter of Moscow, additional regional elements – by the norms of five laws of Moscow, among which the excessive volume of the procedure for recalling the mayor of Moscow, indicated by the norms of art. 61 of the law of the same name, stands out.

As part of a general analysis of the sources of the constitutional and legal status of the governor of St. Petersburg, it is worth pointing out that the main elements of the constitutional and legal status of the governor of St. Petersburg are regulated by the provisions of art. 37-47 of the Charter of St. Petersburg[27], which include:

1) the basics of the status of the governor of St. Petersburg as the chief government official of St. Petersburg, which:

- is obliged to comply with the prohibitions, restrictions indicated by federal legislation, the laws of St. Petersburg (simultaneously holding the position of a deputy of the State Duma, a member of the Federation Council, a judge, other state positions of the Russian Federation, federal civil service, state positions of a constituent entity of the Russian Federation, municipal service, other prohibitions, restrictions);
- is obliged, together with his/her spouse, minor children, to comply with the prohibition on opening, using accounts (deposits), storing funds, valuables in foreign banks outside the Russian territory, possessing, using foreign financial instruments;
- receives an official salary determined by the law of St. Petersburg[28];

2) the legal mechanisms for the election of the governor of St. Petersburg, taking office, early termination of powers and temporary fulfillment of the duties of the governor of St. Petersburg;

3) an expanded list of 16 main powers of the governor of St. Petersburg;

4) the basics of the competence of the government of St. Petersburg, other bodies of executive city government, their officials;

5) the procedure for the establishment of the system of executive authorities of St. Petersburg;

6) the basics of regulation of legal acts of the governor and other bodies, officials of the executive power of St. Petersburg;

7) the legal mechanism for financing the system of executive authority in St. Petersburg.

Along with this, additional elements of the constitutional and legal status of the governor of St. Petersburg are established by the norms of other laws of St. Petersburg:

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[22] On the official badges of the mayor of Moscow and the chairman of the Moscow City Duma: the Law of the City of Moscow of November 19, 2003 No. 74 (as amended on December 19, 2012) // Vedomosti of the Moscow City Duma. 03.02.2004. No. 1. Art. 352.

[23] Electoral Code of the City of Moscow: the Law of the City of Moscow of 06.07.2005 No. 38 (as amended on 22.05.2019) //Vedomosti of the Moscow City Duma. 19.08.2005. No. 8. Art. 166.

[24] On government positions in the city of Moscow: the Law of the city of Moscow of 15.07.2005 No. 43 (as amended on 27.01.2016) // Vedomosti of the Moscow City Duma, 31.08.2005, No. 9, Art. 191.

[25] On the government of Moscow: the Law of the city of Moscow of 20.12.2006 No. 65 (as amended on 26.12.2018) // Vedomosti of the Moscow City Duma, 23.03.2007, No. 2, Art. 385.

[26] On the procedure for recalling the mayor of Moscow: the Law of the city of Moscow of 26.12.2012 No. 76 (as amended on 25.05.2016) // Bulletin of the mayor and government of Moscow. No. 2. 15.01.2013.

[27] The Charter of St. Petersburg (adopted by the Legislative Assembly of St. Petersburg on January 14, 1998, as amended on July 23, 2020) // Bulletin of the Legislative Assembly of St. Petersburg. No. 5-6, 03.06.1998.

[28] On the Governor of St. Petersburg: the Law of St. Petersburg of 08.02.2013 No. 55-9 (as amended on 09.06.2016),adopted by the Legislative Assembly of St. Petersburg 06.02.2013 // Bulletin of the Administration of St. Petersburg. No. 2. 27.03.2013.

- the content of Law No. 224-28 of 2005[29] regulates the powers of the governor of St. Petersburg related to the implementation of guarantees to persons in public office;
- the norms of Law No. 335-66 of 2009[30] determine the powers of the governor of St. Petersburg to appoint and manage the government of St. Petersburg;
- the provisions of Law No. 341-60 of 2012[31] provide for the procedures for electing the governor of St. Petersburg;
- the norms of six articles of Law No. 610-107 of 2012[32] of St. Petersburg establish a relatively small procedure for recalling the governor of St. Petersburg;
- The content of Law No. 55-9 of 2013[33] directly defines guarantees for the governor of St. Petersburg.

Analysis of the main and additional regional elements of the constitutional and legal status of the governor of St. Petersburg indicates their similarity with the status of the mayor of Moscow, since the main elements of this status are established by the provisions of the Charter of St. Petersburg, additional elements are the norms of the five laws of St. Petersburg. At the same time, one of the characteristic differences is the excessive volume of the procedure for recalling the mayor of Moscow, indicated by 61 articles of the law of the same name,while the similarly named Law No. 610-107 of 2012[34] of St. Petersburg includes six articles.

At the second stage of a comparative analysis of the constitutional and legal statuses of the mayor of Moscow and the governor of St. Petersburg, the content of the formal, competence-based and sanctioning elements of the analyzed status should be highlighted.

The formal elements of the constitutional and legal statuses of the mayor of Moscow and governor of St. Petersburg determine:

1) the main formal elements, regulated by the provisions of the Charter of Moscow and the Charter of the governor of St. Petersburg, for example:

- the norms of paragraph 6 of Art. 40 of the Charter of Moscow define the text of the oath of the mayor of Moscow: «I swear, while exercising the powers of the mayor of Moscow, to observe the Constitution of the Russian Federation, federal legislation, the Charter and laws of the city of Moscow, honestly and conscientiously fulfill the duties entrusted to me, serve the prosperity of the city and the well-being of its inhabitants»;
- the provisions of paragraph 2 of Art. 39 of the Charter of St. Petersburg reflect the oath of the governor of the following content: «Taking the office of the governor of St. Petersburg, I swear loyalty to the people and the Constitution of the Russian Federation, the Charter of St. Petersburg, I pledge to respect and protect the rights and freedoms of man and citizen, by all means contribute to the prosperity of the city and increase the well-being of its inhabitants»;

2) additional formal elements established by the norms of the laws of Moscow and St. Petersburg:

- the provisions of the special Law of Moscow No. 74 of 2003[35] define the attributive requirements for the official badges of the mayor of Moscow, in St. Petersburg there is no similar act and official badges, but Law No. 165-3 of 2003[36] is in effect with the norms of a detailed description of the official symbols of the city and the order of their application, which includes, inter alia, the rules for the use of city symbols by the governor;

The norms of the Law of Moscow No. 38 of 2005[37] provide for formal norms of the procedures for electing the mayor of Moscow, in which the norms on the mayor are used more than 100 times, and the provisions of Law No. 341-60 of 2012[38] provide for the procedures for electing the governor of St. Petersburg, in which the normson the governor are mentioned 45 times.

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[29] On guarantees of the activities of persons taking public positions in St. Petersburg: The Law of St. Petersburg of 30.05.2005 No. 224-28 (as amended on 11.07.2019), adopted by the Legislative Assembly of St. Petersburg on 11.05.2005 // Bulletin of the Legislative Assembly of St. Petersburg. No. 7-8. 05.08.2005.

[30] On the government of St. Petersburg: the Law of St. Petersburg of 06.07.2009 No. 335-66 (as amended on 08.06.2020), adopted by the Legislative Assembly of St. Petersburg on June 24, 2009 // Information bulletin of the Administration of St. Petersburg. No. 27. 20.07.2009.

[31] On the election of the chief government official of St. Petersburg – the governor of St. Petersburg: the Law of St. Petersburg of 26.06.2012 No. 341-60 (as amended on 22.07.2020) // Bulletin of the Legislative Assembly of St. Petersburg. No. 23.09.07.2012.

[32] On the procedure of the recalling of the chief government official of St. Petersburg – the governor of St. Petersburg: the Law of St. Petersburg of 04.12.2012 No. 610-107 // Bulletin of the Legislative Assembly of St. Petersburg. No. 39.17.12.2012.

[33] On the Governor of St. Petersburg: the Law of St. Petersburg of 08.02.2013 No. 55-9 (as amended on 09.06.2016),adopted by the Legislative Assembly of St. Petersburg 06.02.2013 // Bulletin of the Administration of St. Petersburg. No. 2. 27.03.2013.

[34] On the procedure of the recalling the chief government official of St. Petersburg – the governor of St. Petersburg: the Law of St. Petersburg of 04.12.2012 No. 610-107 // Bulletin of the Legislative Assembly of St. Petersburg. No. 39.17.12.2012.

[35] On the official badges of the mayor of Moscow and the chairman of the Moscow City Duma: the law of the City of Moscow ofNovember 19, 2003 No. 74 (as amended on December 19, 2012) // Vedomosti of the Moscow City Duma. 03.02.2004. No. 1. Art. 352.

[36] On a detailed description of the official symbols of St. Petersburg and the procedure for their use: law of St. Petersburg of 13.05.2003 No. 165-23 (as amended on 11.07.2019), adopted by the Legislative Assembly of St. Petersburg on 23.04.2003 // Bulletin of the Administration of St. Petersburg. No. 6. 30.06.2003

[37] Electoral Code of the City of Moscow: Law of the City of Moscow of 06.07.2005 No. 38 (as amended on 22.05.2019) //Vedomosti of the Moscow City Duma. 19.08.2005. No. 8. Art. 166.

[38] On the election of the chief government official of St. Petersburg – the governor of St. Petersburg: law of St. Petersburg of 26.06.2012 No. 341-60 (as amended on 22.07.2020) // Bulletin of the Legislative Assembly of St. Petersburg. No. 23.09.07.2012.

The competence elements of the constitutional and legal statuses of the mayor of Moscow and the governor of St. Petersburg include:

1) the main competence elements, regulated by the provisions of the Charter of Moscow and the Charter of the governor of St. Petersburg, in particular:

- an expanded list of 12 main powers of the mayor of Moscow: representing the interests of the city of Moscow in relations at all levels or entrusting such representation to other persons; act on behalf of Moscow in accordance with the competence established by the Charter, or entrusting such action to other persons in accordance with the law; approval by signature and publication of the laws of Moscow or their rejection; conclusion of agreements, contracts in accordance with the law; establishing of the Moscow government, decision-making on its resignation, determination of the structure of the Moscow executive authorities; an annual report to the Moscow City Duma on the activities of the Moscow government; etc.;

an expanded list of 16 main powers of the governor of St. Petersburg: representing the interests of the city of St. Petersburg in relations at all levels with the right to sign the relevant agreements and contracts on behalf of the city; approval by signature and publication of the laws of St. Petersburg or their rejection; demand for an extraordinary convocation of a meeting of the St. Petersburg Legislative Assembly and the convocation of a new composition of the St. Petersburg Legislative Assembly earlier than the established date; formation of the government of St. Petersburg, decision-making on its resignation; creation of permanent, temporary councils, commissions, other advisory and consultative bodies under the governor of St. Petersburg; etc.;

2) additional competence elements provided for by legal norms of Moscow and St. Petersburg:

- the provisions of the Law of Moscow No. 43 of 2005[39] regulate the powers and guarantees of persons holding public office in Moscow, including the office of the mayor of Moscow;
- the content of the Law of Moscow No. 65 of 2006[40] includes the powers of the mayor of Moscow related to the appointment and functioning of the Moscow government;
- the content of the Law No. 224-28 of 2005[41] regulates the powers of the governor of St. Petersburg related to the implementation of guarantees of persons in public office;
- the norms of Law No. 335-66 of 2009[42] define the powers of the governor of St. Petersburg to appoint and manage the government of St. Petersburg;
- the content of Law No. 55-9 of 2013[43] directly defines guarantees for the governor of St. Petersburg.

The sanctioning elements of the constitutional and legal statuses of the mayor of Moscow and the governor of St. Petersburg include:

1) the main sanctioning elements regulated by the provisions of the Charter of Moscow and the Charter of the governor of St. Petersburg, for example:

- provisions of art. 7 of the Moscow Charter define the principle of responsibility of the authorities for independently adopted decisions within the framework of the established powers;
- norms of art. 38 and art. 52 of the Charter of Moscow establish the foundations of the control functions of the Moscow City Duma, the prosecutor's office and the corresponding right to prosecute the subjects of power for violation of the law;

Art. 82 of the Charter of Moscow includes a general rule of responsibility for failure to comply with the norms of the Charter, normative legal acts of Moscow, which is determined by law;

- norms of art. 42 of the Charter of Moscow determine the legal mechanism for the early termination of the powers of the mayor of Moscow in nine cases with the right of the Moscow City Duma to express no confidence in the mayor in three cases;
- in the Charter of St. Petersburg, only one rule is designated concerning the general responsibility of the governor: paragraph 10 of art. 53 reflects the general requirement for mandatory compliance with the provisions of the Charter and the laws of St. Petersburg on the city territory, subject to the onset of administrative responsibility for the failure of such compliance, which is determined by the law of St. Petersburg;

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[39] On government positions in the city of Moscow: the Law of the city of Moscow of 15.07.2005 No. 43 (as amended on 27.01.2016) // Vedomosti of the Moscow City Duma, 31.08.2005, No. 9, Art. 191.

[40] On the government of Moscow: the Law of the city of Moscow of 20.12.2006 No. 65 (as amended on 26.12.2018) // Vedomosti of the Moscow City Duma, 23.03.2007, No. 2, Art. 385.

[41] On guarantees of the activities of persons taking public positions in St. Petersburg: theLaw of St. Petersburg of 30.05.2005 No. 224-28 (as amended on 11.07.2019), adopted by the Legislative Assembly of St. Petersburg on 11.05.2005 // Bulletin of the Legislative Assembly of St. Petersburg. No. 7-8. 05.08.2005.

[42] On the government of St. Petersburg: the Law of St. Petersburg of 06.07.2009 No. 335-66 (as amended on 08.06. 2020), adopted by the Legislative Assembly of St. Petersburg on June 24, 2009 // Information bulletin of the Administration of St. Petersburg. No. 27. 20.07.2009.

[43] On the governor of St. Petersburg: Law of St. Petersburg of 08.02.2013 No. 55-9 (as amended on 09.06.2016),adopted by the Legislative Assembly of St. Petersburg 06.02.2013 // Bulletin of the Administration of St. Petersburg. No. 2. 27.03.2013.

- norms of art. 40 of the Charter of St. Petersburg regulate the legal mechanism for early termination of the powers of the governor of St. Petersburg in nine cases with the right of the Legislative Assembly of St. Petersburg to express no confidence in the governor in three cases;

2) additional sanctioning elements established by the norms of the laws of Moscow and St. Petersburg:

- the norms of the Law of Moscow No. 76 of 2012[44] define 61 articles of the procedure for recalling the mayor of Moscow;
- the norms of six articles of Law No. 610-107 of 2012[45] of St. Petersburg establish a relatively small procedure for recalling the governor of St. Petersburg.

The third stage of the comparative analysis is aimed at establishing similar features and differences, uncertainties and gaps in the content of the constitutional and legal status of the mayor of Moscow and the governor of St. Petersburg.

In particular, it can be noted that the comparative analysis of the indicated elements of the constitutional and legal statuses of the mayor of Moscow and the governor of St. Petersburg allows us to draw the following conclusions:

1) the formal elements of the compared statuses are generally similar, but there are some differences: in St. Petersburg, official badges are not used, in Moscow laws, the procedures for electing the mayor are more carefully regulated;

2) the competence-based elements of the analyzed statuses are basically similar, but there are certain differences: the list of expanded powers of the mayor of Moscow according to the Charter is four points less than the powers of the governor of St. Petersburg; in Moscow, unlike St. Petersburg, there is no special law on the mayor's guarantees, which are established by the Law on the general system of guarantees for Moscow civil servants;

3) the sanctioning elements of the status of the mayor of Moscow are of a much larger volume, since the Charter of Moscow contains five articles related to the responsibility of the mayor (in the Charter of St. Petersburg there are two), the Law on the recall of the mayor of Moscow provides for 61 articles (in the similar Law of St. Petersburg there are six articles).

Conclusion

Within the framework of the presented comparative characteristics of the constitutional and legal status of the chief government officials of the constituent entities of the Russian Federation – the cities of Moscow, St. Petersburg, three factors of relevance and importance of the study were initially noted: the factor of the need to ensure a balanced regulation; factor of elimination of gaps in regulation; factor of analytical comparison of the statutory law of the two capitals.

In the course of the theoretical analysis, the main elements of the constitutional and legal status of the chief government official of a constituent entity of the Russian Federation were identified:

a hierarchical group of legislative elements of the constitutional and legal status of the head of the region (basic elements of the Constitution of the Russian Federation, covering the issues of joint jurisdiction and competence of the constituent entities of the Russian Federation; additional elements of the federal level, indicated in art. 18 and other norms of the Law[46]; the main elements of the regional level, which are established by the provisions of the constitutional and statutory acts of the corresponding constituent entity of the Russian Federation);

a group of structural elements of the constitutional and legal status of the chief official of a constituent entity of the Russian Federation (a formal element of the status attributes of the chief government official and procedures for entering such a position; an element of the competence of the head of the region, which is covered by the subjects of jurisdiction and powers of the corresponding constituent entity of the Russian Federation; an element of legal responsibility of the head of the region, the norms of which are enshrined in the Constitution of the Russian Federation, in art. 18 and other norms of the Law, in the provisions of the constitutional and statutory acts of the corresponding constituent entity of the Russian Federation). At the same time, a methodology is proposed for comparative analysis of the statuses of chief government officials of cities of federal significance (Moscow and St. Petersburg) in the context of regional norms in three stages: general analysis of sources; highlighting the formal, competence and sanctioning elements of the status; establishing similar, individual and other characteristics. A comparative analysis based on the proposed methodology led to conclusions about the similarities and differences in the constitutional and legal statuses of the mayor of Moscow and the governor of St. Petersburg.

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Opportunities of the intervention of the central (regional) government in the decisions and operations of the local governments in Hungary

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ABSTRACT
The regulation on the relationship of the central and local governments in Hungary has transformed significantly in the last decade. However, the government have strong tools for the control of the local activities, these tools are just rarely applied by the supervising authorities. The main transformation of that relationship could be observed in the field of the public service provisions. The former municipally based public service system was transformed into a centrally organised and provided model, thus the role of the local governments in Hungary has decreased. The centralisation process have been strengthened by the reforms during the COVID-19 pandemic.
Key words: centralisation, decentralisation, legal supervision, central government, municipalities, Hungary

I Evolvement of the Hungarian legal supervision of the municipalities

1. The beginning. the regulation before the Democratic Transition

A continental (mainly German) municipal was followed by Hungary before the World War II. The legal supervision of the municipalities evolved during the second half of the 19th century. The local municipalities (communities) were supervised by the county self-governments, and the counties were supervised by the county governors ***(főispán)*** who were appointed by the Government. Before 1907 the decisions of the county governor could be appealed to the Minister of Interior, therefore there weren't judicial control. In 1907 a new court action, the warranty complain was introduced, thus the decisions of the county governor could be revised by the Hungarian Royal Administrative Court.

This system remained till the end of the World War II. After the World War II, in 1950 a Soviet-type system was introduced, and the self-governance of the counties and municipalities were abolished by the Act I of 1950 on the Councils[1]. This system was partially changed in 1971. The Act I of 1971 on the Councils[2] (the third act on the councils) transformed the system. The partial self-governance of the councils was recognised by the new Act, although they remained the local agencies of the central government, as well. Therefore, the county councils and the local councils were not directed by the central government, their actions and decisions were supervised. The decisions and actions of the counties were supervised by an organ of the Council of the Ministers (Office for County and Local Councils of the Council of Ministers) and the decisions and operation of the local councils were supervised by the county councils. Although it was a supervision, the decisions of the supervisory authorities could not be revised by the courts. A transitional model was evolved: it was not a pure Soviet-type model, but it was different from the liberal models, as well.

2. The regulation of the Democratic Transition (1990-2010)

In 1990, with the Amendment of the Constitution of the Republic of Hungary[3] and the new Act on Local Self-governments (Act LXV of 1990, hereinafter: Ötv[4]) the former councils were replaced by self-governments. The concept of the Ötv was based on the European Charter of Local Self-Governments, but the rights and autonomies of the local self-governments were even broader. 'Fundamental rights' of the local self-governments were regulated by section 44/A of the Constitution[5], the

[1] The original text of the law in Hungarian, see: [Electronic resource]. URL: https://hu.wikisource.org/wiki/1950._%C3%A9vi_I._t%C3%B6rv%C3%A9ny) (Access date: 09.02.2021).
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[3] See: [Electronic resource].. URL: http://www.njt.hu/translated/doc/TheFundamentalLawofHungary_20201223_FIN.pdf (Access date: 21.01.2021).
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Hungarian regulation was based on the approach of inherent (local government) rights similar to the Jeffersonian concept of local self-governments.[6]

The control of the legality of local governments' actions was based on the French model, on the reformed French municipal model of the Loi Deferre[7]. This task was fulfilled from 1990 to 1994 by the Republic's Commissioner (whose office was organised at regional level), from 1994 to 2006 by the County Administrative Offices and from 2007 to 31st December 2008 by the Regional Administrative Offices.[8] The supervising bodies could not suspend the implementation of the local government decisions; they could only initiate the review procedure at the Constitutional Court. This was an exclusive of right of these organs. The Constitutional Court had the right to annul the local government decrees. Besides that, on the grounds of unconstitutionality, an ***actio popularis*** could be filed by anyone against unconstitutional local government decrees. Other local government decisions could be contested/challenged at the (ordinary) courts[9]. Outside the individual acts ruling on subjective rights and obligations according to the Administrative Procedure Act, self-government decisions could only be litigated by the head of the (county) administrative office as supervising authority after an unsuccessful notification procedure. Decisions, among them the resolutions of the local government could be annulled in these processes by the courts.

Although the regulation on the legal supervision and the judicial review was up-to-date, several dysfunctions had occurred in practice. The main reasons for this were the extralegal problem of scarce resources. On the one hand, the legality control units within the central government agencies were quite small: only approx. 300-350 posts were secured for this task. An average legality controller had to control all issues of 10 municipalities. The central government agency – according to the adapted French model – could only initiate the judicial review of the local government decisions. The competence for annulment was at the courts (local government resolutions) or at the Constitutional Court of the Republic of Hungary (local government decrees). These bodies could also suspend the implementation of the decisions. The courts and the newly organised Constitutional Court had significant resource problems; the procedures were often delayed by which the efficiency of the legal protection was deteriorated.[10]

A weak roll was institutionalised by the municipal system of the Democratic Transition for the prevention of the omission of the municipal bodies. The Act XXXII of 1989[11] on the Constitutional Court stated an action is missed by a public body and the Constitution and especially the fundamental rights are infringed by the omission, the omission could be stated by the Constitutional Court and it obliges to terminate it.[12]

Similarly, as an ***ultima ratio*** of the supervision system, the dissolution of a municipal council (officially it is called in Hungary 'representative body' and in the counties, the metropolitan municipality and the towns with county status as 'assembly' – after the Democratic Transition) by the Parliament was institutionalised. If the Constitution was permanently infringed by the operation of a representative body (practically the council) of a municipality, this body could be dissolved by the Parliament. This procedure was a very complicated one, full with guarantees. The procedure should be initiated by the Government, the initiative should be based on the legal supervision of the county agency of the Government. This initiative should be commented by the Constitutional Court, which should give an opinion of it. After that the Parliament should decide, but in the debate at the Parliament the municipality could take part. It was a very rare tool in the Hungarian system, between 1990 and 2010 only 2 municipal bodies were dissolved (there were 5 municipal terms and there are more than 3200 municipalities in Hungary).

The legal supervision, as well as the judicial and constitutional review of the local government decisions required a reform which was achieved by the Fundamental Law of Hungary and subsequently the Act CLXXXIX of 2011 on Local Self-Governments of Hungary (hereinafter Mötv).[13]

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6 Jefferson stated that the right of the local communities to the self-governance is an inherent right, not a right which is devolved by the central government (***Bowman, A., Kearney, R. State and Local Government. Boston : Cengage Learning. 2011. Pp. 235–236***).

7 Marcou, G., Verebélyi, I. New Trends in Local Government in Western and Eastern Europe. Brussels : International Institutes of Administrative Sciences, 1994. P. 238.

8 From 1st January 2009 to 1st September 2010, due to a constitutional court decision there were no bodies which could perform the tasks of the control of the legality of the decrees of the local governments. The main reason of this status was that the regionalization of the Administrative Offices was not performed by an act adopted by a qualified (two-third) majority act and therefore this Act was declared unconstitutional by the Constitutional Court of Hungary. Because the lack of the two-third majority of the then governing parties and the strong opposition against the regionalisation the Parliament could not adopt the required act. Qualified majority acts are a speciality of the Hungarian law (Jakab, A., Sonnevend, P. Continuity with Deficiencies: The New Basic Law of Hungary. European Constitutional Law Review. 2013. No. 9 (1). P. 110.).

9 Rozsnyai, K. Közigazgatási bíráskodás Prokrusztész-ágyban. Budapest : ELTE Eötvös Kiadó. 2010. Pp. 122–128.

10 Hoffmanné Németh, I., Hoffman, I. Gondolatok a helyi önkormányzatok törvényességének ellenőrzéséről és felügyeletéről Magyar Közigazgatás, 2005. No. 55 (2). Pp. 98–102.

11 Text of the law in Hungarian see.: [Electronic resource]. URL: https://alkotmanybirosag.hu/alkotmanybirosagi-torveny-1989 (Access date: 21.01.2021).

12 Fábián, A., Hoffman, I. Local Self-Governments. In: Patyi, A. & Rixer, Á. (eds.): Hungarian Public Administration and Administrative Law. Passau : Schenk Verlag. 2014. P. 321

13 For the current version of the law, see: [Electronic resource]. URL: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139876.386439 (Access date: 21.01.2021).

II Transformation of the Hungarian system

1. The transformation of the legal supervision

In 2011, a shared competence system was introduced by article 24 and article 25 paragraph 2 point) c) of the Fundamental Law and by the section 136 of the Mötv. Since then, the right to review the legality of local government decrees belongs to the Local Government Senate of the Curia, the supreme court of Hungary, which can annul the local government decree if regulations of an act of Parliament or of decrees of the central government bodies are violated. The local government decree can be annulled by the Constitutional Court, if it is unconstitutional. The delimitation of the powers of these two bodies was uncertain, but Decision 3097/2012[14]. (dated 26.07.2012) of the Constitutional Court stated that the constitutional complaint or motion can only be decided by the Constitutional Court, if it refers exclusively to the breach of the Fundamental Law. If there is also a question of legality, not only of constitutionality, the lack of competence of the Constitutional Court will be declared, and the complaint or motion will be transferred to the Curia. This regulation has been partially transformed after 2017. The Constitutional Court stated its competence in those cases in which not only the Fundamental Law, but another Acts of Parliament are infringed if fundamental rights are seriously harmed by the municipal decree [Decision 7/2017[15] (dated 18.04.2017)].[16]

The legal supervision of the local government decisions is performed by the County (Capital) Government Offices. Their competence is regulated by the Mötv and by the Act CXXV of 2018 on the Administration of the Government.[17] The ombudsman can examine the legality and the harmony with fundamental rights of the local government decrees, as well. The judicial review of a local government decree can thus be initiated either by the county (capital) government offices or by the ombudsman. The procedures of the Curia can also be initiated by the judge of a litigation, if the illegality of a local government decree that should be applied in the case is probable. *A posteriori* constitutional review of the Constitutional Court can be initiated by the judge of the given court case, by the ombudsman and by the Government of Hungary. Latter is based on the notice of the Government Representative (the head of the county or capital government office) and on the proposal of the minister responsible for the legal supervision of local governments (now the Minister leading the Prime Minister's Office).

The *omission procedure* is a new element of the system (Nagy, 2017: 24-25). As I have mentioned, a weak tool was institutionalised by the former model. In the new model the Curia can declare a local government to have failed to adopt a decree. If a resolution or a provision of a service has been missed by the municipality, the responsibility belongs to the designed (8 court of the 20 county courts) county (and Metropolitan) courts which have administrative branches (these courts are operating actually on regional level). The procedure has been regulated by the Act I of 2017 on the Code of the Administrative Court Procedure since 2018[18]. The case can be exclusively initiated by county government office if a municipal decree has not been passed and it can be initiated by the county government office and by the party who assumes an individual infringement.[19] In Hungarian public law authorisation for adopting a decree can stem from an obligation of the legislator, therefore the omission of regulating can be declared. Although the local governments also have original legislative powers, several important subjects of these original powers are listed by the Mötv. An omission procedure is justified by the failure to adopt a decree in these fields. Similarly, the county government offices can provide the omitted services and could adapt a missing resolution, as well.

Prima facie, full legal protection is provided by this new model of judicial and constitutional review to individuals. If we take a closer look at the regulation, several lacunas can be noticed. The main problem is that individuals affected cannot initiate the judicial review of a local government decree directly. As it was mentioned above, only the judge of the case, the ombudsman and the county government office may submit a request to the Curia. The procedure aims to safeguard first of all public interest, while safeguarding subjective rights and positions only applies as an accessory aim. Although individuals can submit a constitutional complaint to the Constitutional Court against the decisions of the courts, the success of these procedures is highly doubtful, as a local government decree rarely violates exclusively the Fundamental Law without

[14] The text of the decision of the Constitutional Court in Hungarian, see: [Electronic resource]. URL: http://public.mkab.hu/dev/dontesek.nsf/0/E9ADCBBB19353CFEC1257ADA00524D3C?OpenDocument (Access date: 21.01.2021).

[15] The text of the decision of the Constitutional Court in Hungarian, see: [Electronic resource]. URL: https://net.jogtar.hu/jogszabaly?docid=A17H0007.AB&txtreferer=00000001.TXT (Access date: 21.01.2021).

[16] In the case building of the minarets and the practices of the muezzins were banned by the municipal decree, by which not only the constitutional regulations on the freedom of faith, but the regulations of the Act on Freedom of Faith and the regulations of the Act on Protection of the Built Environment (the municipalities do not have competences on the ban of these religious buildings) were infringed. According to the former regulation, the case – which was initiated by the ombudsman – should have been transferred to the Curia (the Supreme Court of Hungary), because not only the rules of the Fundamental Law were infringed by the local regulation. The Constitutional Court decided the case and quashed the regulation. In the justification the competence of the Constitutional Court was based on the serious infringement of the fundamental rights of the citizens and the required high level of their protection.

[17] Supra note 12. Pp. 346–347.

[18] Text of the law see.: [Electronic resource]. URL: http://www.njt.hu/translated/doc/J2017T0001P_20180101_FIN.pdf (Access date: 21.01.2021).

[19] Hoffman, I., Kovács, A. Gy. Mulasztási per. In: Barabás, G., F. Rozsnyai, K. & Kovács, A. Gy. (eds.): Kommentár a közigazgatási perrendtartáshoz. Budapest : Wolters Kluwer Hungary, 2018. Pp. 694.

being contrary to lower sources of law. The unconstitutional local government decree often violates an act of Parliament or a decree of a central government organ and – if the constitutional complaint is based on the unconstitutionality of the applied decree – the decree cannot be reviewed by the Constitutional Court in lack of competence.[20] Exclusively the Curia is authorised by the new constitution and by the Court Act for judicial review of the legality of local government decrees. Other hindrances can stem from the strict legal requirements of the admission procedure of the Constitutional Court.[21] Thus a decision on the merits of the complaint rarely occurs.[22]

The main problem thus stems from the lack of a remedy similar to the constitutional complaint for local government decrees, which would be necessary because of the shared competence of norm control in this field. The judicial review procedure of the Curia cannot be directly initiated by an individual; individuals can merely – and not bindingly – ask the county government office, the ombudsman or the judge of the given case to ask the Curia for revision of the legality of the local government decree contested. If an individual submits a direct application to the Curia to annul a local government decree or if the Constitutional Court transfers such a complaint because of the shared competence to the Curia, the application or the complaint will be rejected because of the lack of standing.[23]

Till 2020 the local government body cannot contest the decision of the Curia before the Constitutional Court. It has changed by an Amendment of the Act CLI of 2011 on the Constitutional Court in 2019, thus the municipalities have the right to submit constitutional complaint against those court decisions (including the decisions of the Curia) by which their competences are infringed. It is not clear, and because of the novelty of the regulation a standing practice has not evolved whether the municipalities can or cannot submit successful applications against the decisions of the Curia based on the infringement of the competences, if they are not agree with the decisions of the court. So far there has been one single complaint against the resolution of the Curia, and it was rejected based on the logic of the regulation before the 2019 Amendment. In this case a local government appealed the resolution of the Curia and the Constitutional Court rejected the complaint. In the practice of the Constitutional Court, the local government cannot submit a constitutional complaint because it can be submitted only on the grounds of violation of fundamental human rights. According to the interpretation of the Constitutional Court, local governments have no fundamental rights, they have just "competences protected by the Constitution". There is no means of contesting, no effective complaint[24] against decisions which infringe the self-governance of the local governments.[25] This practice – which does not recognise the right to submit a constitutional complaint – is a strong limitation to the autonomy of local governments, because their competences are only partially protected. As I have mentioned, this regulation changed in early 2020, but there has not been relevant case based on the amended regulation, therefore its impact cannot be yet estimated.

It is clear, that the legal regulation on the control of the local government decision making has been significantly transformed after 2012. If we look at the actual practice, it can be stated, that these procedures are just rarely used by the supervising authorities. First of all, the supervising authorities have limited resources – similarly to the former situation. Therefore, they detected low number of infringements during their activities (see Figure 1).

If an infringement is detected, the municipalities are mainly cooperative: the majority of the calls for legality are accepted by the municipal bodies: only 1,58% of the calls were rejected in 2019 (see Figure 2)

Because of the lack of the resources, the great number of the municipal decisions, the focus of the legal supervision activity of the county government offices have been transformed. As I have mentioned earlier, the ***a priori*** tools were institutionalised in the early 1990s. It can be emphasised that now legal supervision in Hungary focuses on the ***prevention*** of the infringements.[26] The main tool of the county government offices for this prevention is the professional aid (assistance) to the municipal bodies (see Figure 3)

Therefore, the role of the court cases has remined very restricted, and the majority of these cases are not submitted by the county (capital) government offices, but the by the judges of litigations and ombudsman. Thus, the court cases are mainly based on the protection of the subjective rights (private interests) and not on the protection of the public interests (see Table 1 and Figure 4).[27]

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[20] See for example the Resolution No. 3097/2012. (dated 26.07.2012) of the Constitutional Court, the Resolution No. 3107/2012. (dated 26.07.2012.) and the Resolution No. 3079/2014. (dated 26.03.2014.) of the Constitutional Court.

[21] See for example the Resolution No. 3315/2012. (dated 12.11.2012.) of the Constitutional Court in which the Constitutional Court rejected the complaint because the decision of the local government could be appealed. The Constitutional Court rejected the complaint for the same reason in the Resolution No. 3234/2013 (published on 21st December).

[22] For example, the Constitutional Court accepted the complaint in the Resolution No. 3121/2014 (dated 24.04.2014.) but dismissed it because the local government decree which regulated the fees, the licences and the appearance of the taxis of Budapest was declared constitutional.

[23] See the grounds of appeal of the Resolution of the Local Government Court of the Kúria No. Köf. 5054/2012/2.

[24] Such an effective remedy is the German Kommunlaverfassungsbeschwerde which can be submitted for the infringement of the local government competences guaranteed by the Grundgesetz (Umbach and Clemens 2012: 1625-1632).

[25] See Decision No. 3123/2014. (dated 24.04.2014.) of the Constitutional Court.

[26] Hoffman, I, Rozsnyai, K. The Supervision of Self-Government Bodies' Regulation in Hungary. Lex localis — Journal of Local Self-Government. 2015. Vol. 13 No. 3. Pp. 496–497.

[27] In 2012 and 2013 the significant number of the cases initiated by the county government offices were based on the transfer of pending cases from the Constitutional Court tot he Curia.

Table 1 Judicial review procedures of the Curia from 2012 to 2020

Year	Mainly protection of the public interest		Protection of the public and private interests	
	Omission cases	Judicial review of the municipal decrees initiated by the county government offices	Judicial review of the municipal decrees initiated by the judge of a litigation	Judicial review of the municipal decrees initiated by the ombudsman
2012	5	34	10	0
2013	6	27	24	3
2014	13	10	9	1
2015	2	14	26	9
2016	0	24	22	1
2017	4	9	22	2
2018	4	6	21	1
2019	3	8	27	1
2020	3	1	16	0

(Source: edition of the author, based on the Municipal Decree decisions of the Curia, see: https://kuria-birosag.hu/hu/onkugy)

2. New tools for the intervention of the central government: the delimitation of the financial autonomy of the municipalities

The paradigm on the relationship of the central and local governments have been transformed radically by the new Hungarian Constitution, by the Fundamental Law.[28] The former regulation was based on the passive role of the central government, but now it has such responsibilities which provide them a strong and active intervention into the local affairs.

First of all, as we have mentioned, a missed decision can be substituted by the County Government Offices. Although these procedures are rare (yearly 3-6), it provides the possibility of the central intervention.

Secondly, if an obligation based on the international law or based on the European Law is jeopardised by the municipalities, the Government can substitute it. The main reason was that several omission and infringements of the municipalities caused procedures against the (central government of) Hungary at the European Court of Justice. To prevent these procedures, the Government have the possibility to substitute the municipal decisions.[29] Although it is clear, that the political question doctrine could be applied for these cases, but the resolution of the government can be sued by the municipalities.

During the 2000s the municipal debt was a great challenge. The new Municipal Code, the Mötv and the Act on the Economic Stability of Hungary have regulations to prevent the municipal indebtedness. First of all, the municipalities are not permitted to plan in their budget deficit of the annual operation, deficit can be planned only for investments and developments. Secondly, a permission of the Government is required for the municipal borrowing (in principle). These resolutions cannot be sued by the municipalities. The investment decisions of the municipalities are significantly controlled by the (central) government. This control is strengthened by the centralisation of the national management of the EU Cohesion Funds. Because the majority of the local investments and developments are co-funded by the EU cohesion funds, the central control is strengthened by the centralised management.[30] These tendencies were encouraged by the ASP system which is a centrally monitored application centre for the local budgeting and spending.

III The transformation of the municipal tasks: strong centralisation after 2011/12

After 2010, the newly elected Hungarian government decided to reorganize the system of human public services. The main goal of the reform was to centralise the maintenance of public institutions in the fields of primary and secondary education, health care and social care. Before 2010, most of the institutions were maintained by local governments: e. g. inpatient health care was a compulsory task of the counties, primary care was under the authority of municipalities. According to governmental statements, serious problems occurred before 2010 in these sectors. The local governments lacked sufficient budgetary resources to maintain their institutions effectively and transparently, therefore only the state administration could provide these public services on a unified high level of quality. Governmental decision-makers deemed that only the control of the central government is able to ensure equal opportunities in these sectors.[31] The Government established agency-type central bodies and their territorial units for the task of maintaining institutions (e. g. schools, hospitals and nursing homes) in the aforementioned three fields:

[28] Fazekas, J. Central administration, in: Patyi, A. & Rixer, Á. (eds.) Hungarian Public Administration and Administrative Law (Passau: Schenk Verlag). 2014. P. 292.

[29] Supra note 13. P. 346.

[30] Hoffman, I. Bevezetés a területfejlesztési jogba. Budapest : ELTE Eötvös Kiadó, 2018. P. 100.

[31] These governmental statements are summarized in the Rapporteur's Justification of the Act CLIV of 2011 on the Consolidation of the Self-governments of Counties and the Rapporteur's Justification of the Act CXC of 2011 on Public Education.

Figure 1 Number of municipal decrees, another municipal decisions and infringements of the local decisions detected by the county / capital government offices in 2019 (Source: OSAP 2019)[1]

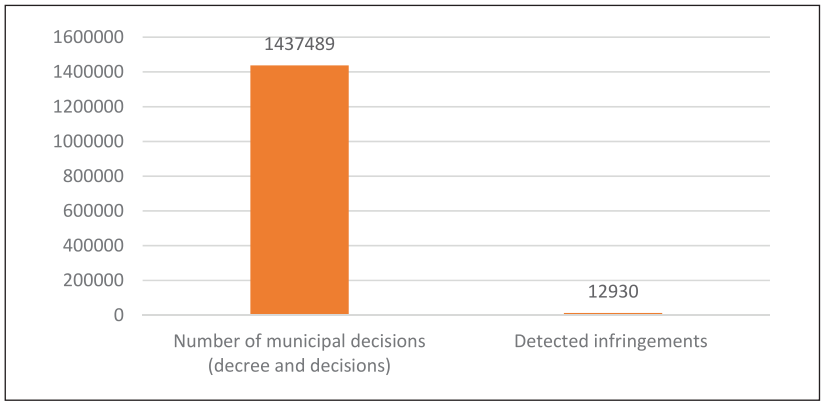


Figure 2 Legal notices in 2019 (Source: OSAP 2019)

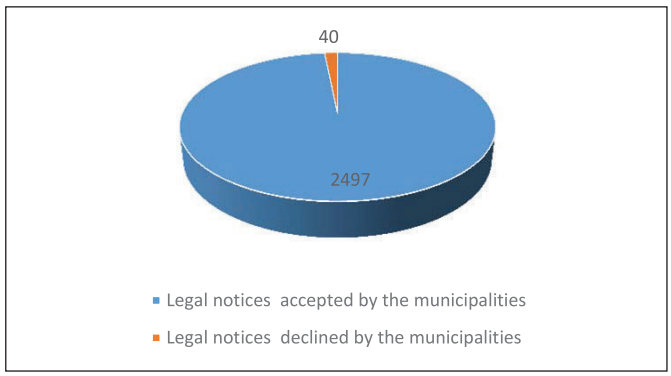
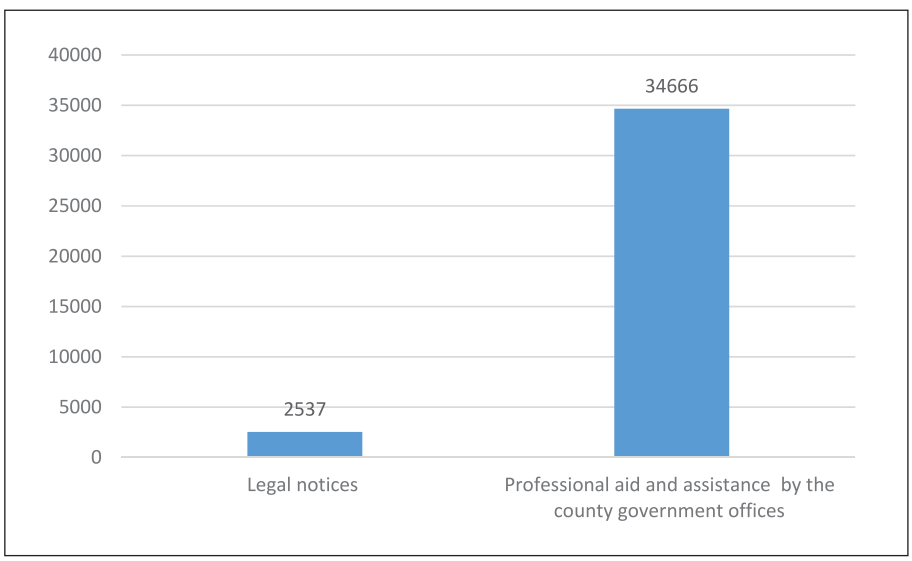
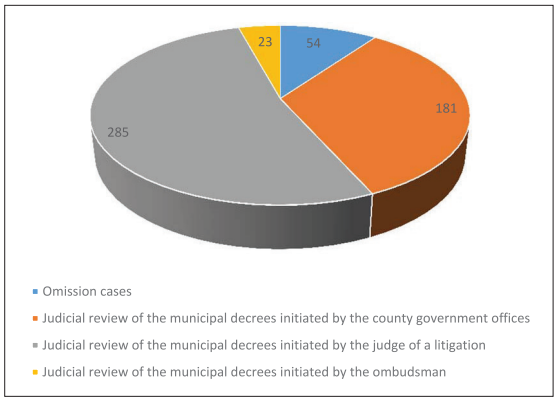


Figure 3 Professional aid and legal notices of the county (capital) government offices in 2019 (Source: OSAP 2019)



[1] OSAP (2019) A törvényességi felügyelet statisztikai adatai. См.: [Электронный ресурс]. URL: https://2015-2019.kormany.hu/hu/dok?source=7&type=308#!DocumentBrowse (дата обращения: 21.01.2021).

Figure 4 Judicial review procedures of the Curia from 2012 to 2020 (in total)



1. health care: National Institute for Quality- and Organizational Development in Healthcare and Medicines, (Reorganised in 2015 as National Health Care Service Center);
2. primary and secondary education: Klebelsberg Centre and the Directorates for the School Districts for the maintenance of service providers;
3. vocational education: National Office of Vocational Education and Training and Adult Learning and the (regional) Vocational Training Centers;
4. social care and child protection: General Directorate of Social Affairs and Child Protection.

Agencies are widely used types of the non-ministerial sphere of central administrations. These bodies are usually to some extent independent from Government and are entitled to rule-making and individual decision-making competences, too. The main advantage of their existence is that they concentrate on a few specified tasks, while the ministries can develop policies and higher rule-making.[32] Furthermore, agencies as buffer organizations may provide a much more flexible framework of human resource management during personnel cutback campaigns, which are rather frequent in Hungary.[33] In spite of their (respective) autonomy, agencies often carry out political tasks and frequently operate under tight governmental or ministerial control.[34]

Another very important aspect of centralization is the organisational power[35] of the Government and the minister overseeing these agencies. In accordance with the Fundamental Law, the Government may establish government agencies pursuant to provisions laid down by law (Art. 15). The origin of this power is the authorization of the Parliament to the Executive to implement its program in certain sectors and in general. For this purpose, the Government must have an appropriate and well-constructed administrative system. The transformation can be observed by the analysis of the annual budget of the Ministry of Human Capacities, which is now responsible for the centralised service provision.[36]

Table 2 Total expenditures (in million HUF)37 of the budgetary chapter directed by the Ministry of Human Capacities

Year	Total expenditures (in million HUF) of the budgetary chapter directed by the Ministry of Human (formerly National) Capacities*
2011	1 535 370,6
2012	1 949 650,5
2013	2 700 363,9
2014	2 895 624,8
2015	3 049 902,2
2016	3 011 947,7

* Inflation rate was 3,9% in 2011, 5,7% in 2012, 1,7% in 2013, and -0,9% in 2014 based on the data of the Hungarian Central Statistical Office (www.ksh.hu, downloaded at 5th January 2016).

32 Peters, B. G. The Politics of Bureaucracy. An Introduction to Comparative Public Administration. London and New York : Routledge, 2010. Pp. 129–130, 314–315.

33 Hajnal, Gy. Agencies and the Politics of Agencification in Hungary. Transylvanian Review of Administrative Sciences, 2011. Special issue. Pp. 77–78.

34 on politicisation see. Hajnal, Gy. Op. Cit.

35 Böckenförde, E.-W. Die Organisationsgewalt im Bereich der Regierung. Eine Untersuchung um Staatsrecht der Bundesrepublik Deutschland. Berlin : Duncker & Humblot. 1964; Fazekas, J. Central administration, in: Patyi, A. & Rixer, Á. (eds.) Hungarian Public Administration and Administrative Law. Passau : Schenk Verlag. 2014. Pp. 290–291.

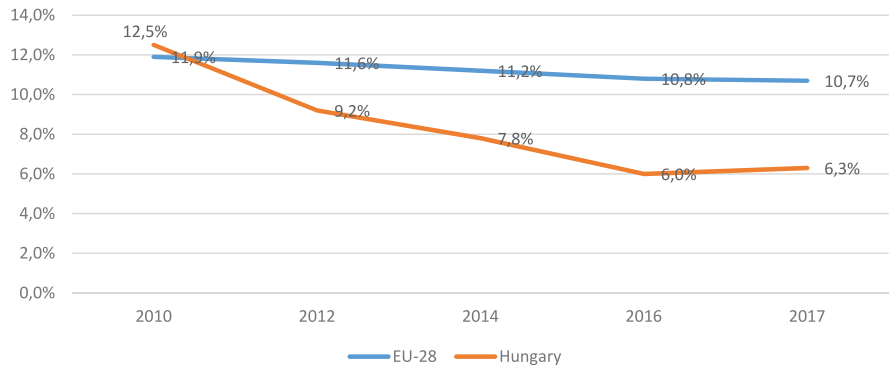
36 Hoffman, I., Fazekas, J., Rozsnyai, K. Concentrating or Centralising Public Services? The Changing Roles of the Hungarian Inter-municipal Associations in the last Decades. Lex localis — Journal of Local Self-Government. 2016. Vol. 14. No. 3. Pp. 468–469.

37 In January 2020 1 EUR is about 360 HUF and 1 RUB is about 4 HUF.

Source: Act CLXIX of 2010 on the budget of the Republic of Hungary, Act CLXXXVIII of 2011, Act CCIV of 2012, Act CCXXX of 2013, Act C of 2014 and Act C of 2016 on the central budget of Hungary

In sum, the maintenance agencies in these three sectors are rather tightly subordinated to the Government and more directly to the Minister of Human Capacities. This influence expands to the territorial units. Thus, the role of the municipalities have been significantly weakened which can be observed by the municipal expenditures (Hoffman, 2018b: 937).[38] In 2010 the municipal expenditures were 12,5% of the GDP and in 2017 only 6,3% (in the EU-28 in 2010 the municipal expenditures were 11,9% and in 2017 10,7% of the GDP) (see Figure).

Figure 5 Local government (in the % of the GDP) expenditures in the EU-28 and in Hungary between 2010 and 2017



Source: Eurostat (http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tec00023&language=en)

This process has been strengthened by the legislation after the COVID-19 pandemic. The regulation on local taxation was amended, and the shared revenues from the vehicle tax has been centralised and the most important local tax, the local business tax has been reduced for the small and medium enterprises, thus the local revenues were reduced and the national incomes became more centralised.

Conclusions

The regulation on the relationship of the central and local governments in Hungary transformed significantly in the last decade. Although the government have strong tools for the control of the local activities, the main transformation could be observed in the field of the public service provisions. The former municipally based public service system was transformed into a centrally organised and provided model, thus the role of the local governments in Hungary has decreased.

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[38] Hoffman, I. Challenges of the Implementation of the European Charter of Local Self-Government in the Hungarian Legislation. Lex localis — Journal of Local Self-Government, 2018. Vol. 16. No. 4. Pp. 937.

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Awarding the Sign «Resident of Beleaguered Sevastopol» as a New Basis for Assigning Persons to the Category of Veterans of the Great Patriotic War

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ABSTRACT
In this article, the author considers persons awarded the sign «Resident of Beleaguered Sevastopol» as a new basis for classifying persons as veterans of the Great Patriotic War, introduced into the legislation of the Russian Federation in 2020, drawing an analogy with the status of persons awarded with the sign «Resident of Blockaded Leningrad « In order to improve the specified subcategory of veterans of the Great Patriotic War. According to the author, the legal relationship regarding the assignment of the federal title of veteran of the Great Patriotic War for persons who lived in beleaguered Sevastopol currently includes, in addition to the material and legal component (the fact of a person's residence in Sevastopol during the specified period), also procedural component in the sphere of awards of the subject of the Russian Federation, which is at the discretion of the legislator of the subject of the Russian Federation. The author proposes to abandon the criterion for awarding a sign in favor of establishing in the federal law specific criteria for the residence of persons in a certain territory during the Great Patriotic War, to adopt a Resolution of the Government of the Russian Federation on the procedure for determining persons falling under the criteria of residence in these cities, so that this determination can be carried out on the entire territory of the Russian Federation, and also establish a single criterion for referring to veterans of the Great Patriotic War for residents of beleaguered Sevastopol and blockaded Leningrad, associated with the fact of living in these cities during the beleaguer (blockade).
Keywords: legal status of veterans, social security, privileged categories of citizens, legislation of the constituent entities of the Russian Federation

As the honoring of defenders of Fatherlands' remembrance, protection of historical truth and inadmissibility of depreciation of peoples' exploit by defense of Fatherland have been included in constitutional norms by the Law of Russian Federation about the constitutional amendments № 1 from 14.03.2020[1] (Part 3 Article 67.1 of the Russian Federation's Constitution in new version)[2]. E.V. Sazonnikova relates the mentioned norms of the Russian Federation's Constitution to constitutional values of Russian Federation[3]. The disclosure of mentioned clauses of the Constitution of Russian Federation in consideration of methodical interpretation this article of the Fundamental law is exercised by adopting both federal laws and the laws of the regions of Russian Federation.

The Federal law «About veterans»[4], in order to take into account the merits of defense of Fatherland, perfect military service, other state service and long-term faithful work, determined beside other categories as well the category «Veterans of the Great Patriotic War» (Article 1). The mentioned law doesn't assign a unified category «The veteran»[5], so, the criteria whether a person belongs to any group of veterans are determined by law in description of every particular category of veterans, and the legal status «the veteran» depends on the fact if a person belongs to any category mentioned in Article 1 of the Federal law «About veterans». At the same time the Federal law «About veterans» determines the federal categories

1 About improving the regulation of particular issues of the public powers organization and functioning: the law of the Russian Federation about the amendments to the constitution from 14.03.2020 №1-ФКЗ [online source] Access from St. Petersburg «Consultant Plus». URL: http://www.consultant.ru/documents/cons_doc_LAW_346019 (data of access: 16.02.2021)

2 The Constitution of the Russian Federation: accepted by the nationwide vote 12.12.1993 with amendments, approved in the course of all-Russian vote 01.07.2020 [online source] Access from St. Petersburg «Consultant Plus». URL: http://www.consultant.ru/documents/cons_doc_LAW_28399 (data of access: 16.02.2021)

3 E.V. Sazonnikova. The remembrance of the Fatherlands defenders and the defence of the historical truth as the constitutional values. // Constitutional and municipal law. 2020. №10. Pages 29-32.

4 About veterans: the federal law from 12.01.1995 №5-ФЗ (redaction from 30.12.2020) [online source] // Access from St. Petersburg «Consultant Plus». URL: http://www.consultant.ru/documents/cons_doc_LAW_5490 (data of access: 16.02.2021)

5 J.V. Belyaninova, O.A. Gurina, N.A. Sackarova. The commentary on the federal law from 12.01.1995 №5-ФЗ «About veterans» redacted by T.S. Guseva [online source] Access from St. Petersburg «Consultant Plus», 2016. URL: http://www.online11.consultant.ru/cgi/online.cgi?req=doc&base=CMB&n=18315#034312692820780244 (data of access: 16.02.2021)

of veterans, specified for legal relationship on the whole territory of Russian Federation, which have to be distinguished from other regional categories of veterans (e.g., labor veteran of Leningrad region, labor veteran of Kaliningrad region etc.).

The list of persons, who belongs to the category «The veterans of the Great Patriotic War», is determined by the Article 2 the Federal law «About veterans» and consist of four subcategories of mentioned category: (1) participant of the Great Patriotic War based on nine bases of assigning; (2) persons who worked for needs of defense or for military units[6]; (3) persons who were awarded the sign «Resident of blockaded Leningrad» and the sign «Resident of beleaguered Sevastopol», (4) persons who served in the hinterland for at least six month or who had been awarded an order or medal for the good service during the Great Patriotic War (until 1995 these persons were called «toilers of the home front»).

It should be noted, that the doctrine doesn't contain any stable denomination of all subcategories of veterans of the Great Patriotic War, and this fact often make it difficult to define, whether a person belongs to one of the categories, and to understand the person's status and right to privilege, and also to draft legal acts for social support for veterans, especially for persons, who have a certificate of Participant of the Great Patriotic War, but not including the events 1941-1945, for example the participants of fights on Damansky Island 1969, or persons who doesn't have a certificate of Participant of the Great Patriotic War, e.g. young prisoner of fascist concentration camps, or war babies.

As opposed to the first, second and fourth subcategories, the third category is not related to direct accomplishment of activity by a person during the Great Patriotic War, but to the fact of being awarded a certain sign.

The Federal law №431 from 22.12.2020[7] includes in the mentioned subcategory not only the persons awarded the sign «Resident of blockaded Leningrad», but also the persons awarded the sign «Resident of beleaguered Sevastopol», and this fact requires doctrinal interpretation of all amendments, and also establishing the order, according to that any person would belong to mentioned base. It was determined as well, that the mentioned persons have right to monthly cash payments (subparagraph 5 paragraph 1 Article 23 Federal Law «About veterans») and to social support (Article 18 Federal Law «About veterans»).

The draft of the federal law «About amendments to particular legislative acts of Russian Federation according belonging people awarded the sign «Resident of beleaguered Sevastopol» to veterans of the Great Patriotic War, and establishing for them legal guarantees of social protection» was developed for purpose to fulfill the decrees of the President № 546 from March 18, 2020.

As indicated in the explanatory note to the draft bill[8], prior to the development of the draft law, in order to determine the status of the category of citizens «Resident of beleaguered Sevastopol» ant to maintain the social supportive measures, which have been previously granted to the citizens by The Law of the Ukraine №3551-XII from 22.10.1993 «About the status of War's veterans, guarantees and social support», and also in order to establish the sign «Resident of beleaguered Sevastopol», the Law of Sevastopol-City №339 from 20.04.2014 «About the Residents of beleaguered Sevastopol» has been passed, according to them the supporting measures for people lived in Sevastopol and awarded the sign «Resident of beleaguered Sevastopol» have been realized .

In conformity with the Law of Sevastopol-City №339[9] and according to the order, established by The Governmental Regulation of Sevastopol № 341[10] from 27.04.2017, the sign «Resident of beleaguered Sevastopol» is presented to Citizen of Russian Federation, foreign citizen and people without citizenship, who lived on the territory of Sevastopol during the defence of the city from 30.10.1941 till 4.07.1942.

In such a way according to the explanation of the draftsman, the federal law about a new bases of assigning persons to veterans of the Great Patriotic War has a main goal – to restore the status of veterans of the Great Patriotic War for mentioned persons, which they got according to the Law of Ukraine being valid on the territory of Sevastopol before annexation of the Republic of Crimea by the Russian Federation in 2014.

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6 I.A. Slobtsov, O.V. Shashkova (Kuznetsova), N.V. Shashmurina. The commentary on the federal law from 12.01.1995 №5-ФЗ «About veterans». [online source] // Access from St. Petersburg «Consultant Plus». 2010. URL: http://www.online11.consultant.ru/cgi/online.cgi?req=doc&base=CMB&n=16466#098951380016348 (data of access: 16.02.2021).

7 About amendments to particular legislative acts of Russian Federation according belonging people awarded the sign» Resident of beleaguered Sevastopol» to veterans of the Great Patriotic War, and establishing for them legal guarantees of social protection: the federal law from 22.12.2020 №431-ФЗ [online source] // Access from St. Petersburg «Consultant Plus». URL: http://www.consultant.ru/documents/cons_doc_LAW_371575 (data of access: 16.02.2021).

8 About amendments to particular legislative acts of Russian Federation according belonging people awarded the sign» Resident of Beleaguered Sevastopol» to veterans of the Great Patriotic War, and establishing for them legal guarantees of social protection: the draft bill №1019797-7 (shelved) [online source] // The system of the legislations ensuring. URL: https://sozd.duma.gov.ru/bill/1019797-7 (data of access: 12.01.2021).

9 About the residents of beleaguered Sevastopol: the law of Sevastopol-City from 20.04.2017 №339-ЗС [online source] // Internet-portal of the Sevastopol's legislative assembly. URL: https://sevzakon.ru/view/laws/bank/2017/zakon_n_339_zs_ot_20_04_2017/24689 (data of access: 16.02.2021).

10 About the establishment of the order of production and issuing of the sign «The Resident of the Beleaguered Sevastopol»: the resolution of the Sevastopol's Government from 27.04.2017 № 341-ПП [online source] // Portal «The online fund of the legal and reference documentation». URL:http://docs.cntd.ru/document/446195980 (data of access: 16.02.2021).

According to the conclusion of the Government, stated in opinion letter №8226p-12[11] from 09.12.2010, the draft bill is directed to governmental support of 1217 persons.

At the same time the federal lawmaker, introducing the new bases for assigning the citizens to subcategory «Veterans of the Great Patriotic War», didn't regulate the order of awarding the signs, including the level of state authorities who have to take appropriate decisions, and particular state bodies, who have right to take decision about awarding, reasons for awarding and other elements of relevant legal relationship. The mentioned sign also isn't included in state awarding system of Russian Federation according to the order of the President of Russian Federation №1099 from 7.09.2010»About the measures of improvement of state awarding system of Russian Federation».

So, the assigning of persons lived in Sevastopol from 30.10.1941 till 04.07.1942 to the category of the veterans of the Great Patriotic War isn't automatically accomplished on the ground of living on the territory, but on the ground of awarding mentioned persons by the Sevastopol's executive bodies the sign «Resident of Beleaguered Sevastopol» according to legal acts of Sevastopol.

I.e. the legal relationship on the subject of assignment of federal titleof the veteran of the Great Patriotic War» include nowadays beside formal component (the fact of living on the territory of Sevastopol in the mentioned period of time) also legal component in sector of awarding relationship of the RF regions.

The similar reason for assignment the federal title, based not on the objective criteria, but on taking the appropriate decision by the authorities of the RF subject in conformity with the order, established by the RF authority, is also established nowadays for the other sign, mentioned in the third subcategory of the title refer «The veteran of the Great Patriotic War» – it is the sign «Resident of blockaded Leningrad». The awarding a sign «Resident of Beleaguered Leningrad» is implemented for the reason of the Executive Committee of Leningrad municipal Soviet of People's Deputies № 5 from 23.01.1989[12] by the St. Petersburg's state administration bodies; there is no criteria of investiture of the mentioned sign in federal law, and it leads to establishing of reasons for assignment a title of veteran of the Great Patriotic War not by federal authorities, but by regions of Russian Federation.

According to the names of the signs, if on the federal level a united criterion is established and interpreted, which unites the third subcategory of veterans of the Great Patriotic War – the residence in an particular city (Leningrad or Sevastopol) and at particular time (blockade or siege), so the implementation of the mentioned order in the law of St. Petersburg and Sevastopol determines different conditions of assignment of the federal title of veteran of the Great Patriotic War according to residence term. If there is no direct order of federal lawmaker in relation on supplementary conditions of assignment of the federal title of veteran of the Great Patriotic War by state authorities of the RF subjects, it can be considered to be violation of the constitutional principle of inadmissibility of depreciation of peoples' exploit by defense of Fatherland in relation to residents of blockaded Leningrad, who doesn't possess the appropriate local residence requirement according to the law of the subject of Russian Federation.

Even if for two regions – St. Petersburg and Sevastopol – there are no common criteria in the law of subjects of Russian Federation, but the elaboration of united criteria of assignment of the title gets the a very important political and legal meaning for the regions, which residents displayed the mass heroism during the Great Patriotic War because of living in this city. If the common conditions of referring people to veterans of the Great Patriotic War are regulated with the federal law, than the determination of particular criteria of the assignment of the title, depending on the residence on different territories, have also be implemented on the federal level, e.g. with the Resolution of the Government of Russian Federation as the supreme authority of executive power, and it could ensure that the mentioned acts are valid on the whole territory of the state.

According to the above-mentioned facts, the following measures of improvement of legislative regulation of subcategory «Resident of beleaguered territories» are proposed:

To abandon the criterion for awarding a sign in favor of establishing in the federal law specific criteria of residence of persons in a certain territory during the Great Patriotic War:

To adopt a Resolution of the Government of the Russian Federation on the procedure of determining persons falling under the criteria of residence in these cities, so that this determination can be carried out on the entire territory of the Russian Federation;

To establish a single criterion for referring to veterans of the Great Patriotic War for residents of beleaguered Sevastopol and blockaded Leningrad associated with the fact of living in these cities during the beleaguer (blockade).

Introducing of mentioned amendments into the Legislation of the Russian Federation according to classifying the residents of some territories as veterans of the Great Patriotic War could promote the unity in understanding of merits of mentioned persons during the Great Patriotic War, it also could completely conform to the paragraph 3 Article 67.1 Constitution of the Russian Federation, and will simplify making the decision by executive authorities about the assignment a title of veteran of the Great Patriotic War for particular persons.

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[11] Supra note 8.

[12] About the sign «The Resident of the Blockaded Leningrad»: the clause implemented for the reason of the Executive Committee of Leningrad municipal Soviet of People's Deputies № 5 from 23.01.1989. [online source]// Portal «The online fund of the legal and reference documentation». URL:http://docs.cntd.ru/document/8307238 (data of access: 16.02.2021).

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On the Issue of Holding an Official Sports Event in the Context of the Spread of a New Coronavirus Infection COVID-19

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ABSTRACT
The subject of the article is the organization and conduct of official sports events in the context of the spread of the new coronavirus infection COVID-19 (hereinafter – COVID-19). The author examines the existing legal regulation in the field of epidemiological safety and the problems that arise during sports competitions, using the example of competitions in St. Petersburg.
Keywords: sports law, official sports events, epidemiological safety, COVID-19

Due to the spread of COVID-19, the federal executive authorities of the Russian Federation have adopted a number of regulatory legal acts that establish a set of requirements against the emergence and spread of the virus in the field of sports[1].

In accordance with the requirements of the regulatory legal acts, the organizers of sports events are meant to provide:

- testing participants and event staff for COVID-19;
- conducting official ceremonies, press conferences, interviews, meetings with the media in compliance with the mask regime;
- conducting awards incompliance with social distance requirements;
- restriction of entry to the territory of the sports facility of people who are not spectators ornot connected with the provision of competition and training processes;
- meeting other requirements established by these bylaws against the spread of the virus[2].

In addition, the executive authorities of the subject of the Russian Federation establish requirements against the spread of coronavirus, including the field of sports. Let's examine these requirements with St. Petersburg as an example[3].

In accordance with the Decree of the Government of St. Petersburg No. 121 of March 13, 2020(hereinafter referred to as the Decree of the Government of St. Petersburg No. 121), conducting sports events according to a general rule is prohibited. However, the exception is holding competitions with the participation of more than 50 people, if the event is approved by the Committee for Physical Culture and Sports (hereinafter referred to as the Committee), unless otherwise provided by Federal

[1] SP 3.1.3597-20. Prevention of a new coronavirus infection (COVID-19): Resolution of the Chief State Sanitary Doctor of the Russian Federation No. 15 of May 22, 2020 [Online source] //Access from the SPS «Consultant Plus». URL: http://www.consultant.ru/document/cons_doc_LAW_353494/ (date of publication: 20.12.2020); Regulations on the organization and conduct of official physical culture and sports events activities on the territory of the Russian Federation in conditions of continuing risks of the spread of COVID-19:approved by the Ministry of Sports of the Russian Federation and the Chief State Sanitary Doctor of the Russian Federation on July 31, 2020 [Online source] // Access from the SPS «Consultant Plus». URL: http://www.consultant.ru/document/cons_doc_LAW_359217/ (date of access: 20.12.2020); MR 3.1/2.2.0170/3-20. About recommendations for the prevention of coronavirus infection (COVID-19) among employees: letter from the Federal Service for Supervision in the Field of Protection consumer Rights and Human Well-being of April 7, 2020 No. 02/6338-2020-15 [Online source] //Access from the SPS «Consultant Plus». URL: http://www.consultant.ru/document/cons_doc_LAW_349881/ (date of completion: 20.12.2020); MR 3.1/2.1.0193-20. Recommendations for the prevention of new coronavirus infection (COVID-19) in institutions engaged in the provision of temporary accommodation (hotels and other accommodation facilities): approved by the Chief State Sanitary Doctor of the Russian Federation on June 4, 2020 N 3.1/2.101-93-20 [Online source] // Access from the SPS «Consultant Plus». URL: http://www.consultant.ru/document/cons_doc_LAW_354838/ (date of access: 20.12.2020).

[2] Regulations on the organization and conduct of official physical culture and sports events on the territory of the Russian Federation in conditions of continuing risks of the spread of COVID-19: approved. The Ministry of Sports of the Russian Federation and the Chief State Sanitary Doctor of the Russian Federation of July 31, 2020. [Online source] //Access from the SPS «Consultant Plus». URL:http://www.consultant.ru/document/cons_doc_LAW_359217/ (date of access: 20.12.2020).

[3] On the Protection of the Population and territories from Natural and Man-made Emergencies: federal. Law No. 68-FZ of December 21, 1994 [Online source] // Access from the SPS «Consultant Plus». URL: http://www.consultant.ru/document/cons_doc_LAW_5295/ (date of appeal: 20.12.2020); On the protection of the population and Territories from Natural and Man-made Emergencies in St. Petersburg: law St. Petersburg from September 28, 2005 No 514-76 [Online source] // Access from the « Electronic Fund legal and regulatory and technical documentation». URL: http://docs.cntd.ru/document/8419052 (date of application)-research Institute: 20.12.2020); On measures to counteract the spread of a new coronavirus in St. Petersburg infections (COVID-19): Resolution of the Government of St. Petersburg of March 13, 2020 No 121 [Online source] // Access from the SPS «Consultant Plus». URL: http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=SPB&n=223690#023377044800001312(date of access: 20.12.2020).

Service for Surveillance on Consumer Rights Protection and Human Wellbeing in the city of St. Petersburg for the admission of spectators to the sports event (hereinafter referred to as Rospotrebnadzor)[4].

We will consider the requirements necessary for the approval of the competition. In accordance with the changes in the regulation of 04.12.2020 (entered into force on 05.12.2020) for the approval of the event, among other things, it is required to provide the approval of Rospotrebnadzor for the admission of spectators to the sports event[5].

Since the absence of this document is considered a ground for the refusal to approve conduct of the competition, in fact, the key role in deciding on the possibility of holding the competition is taken by the Department of Rospotrebnadzor for the city of St. Petersburg. In addition, Rospotrebnadzor determines the maximum number of participants and spectators who can attend the event.

The change in regulation has led to some mishaps. For example, a few hours before the match of 05.12.2020, the Zenit volleyball club received a prohibition on holding a match with spectators present, despite the fact that the volleyball club agreed on 30% of the occupancy rate of the Sibur Arena with the Committee[6]. In terms of this prohibition, the question arises about the observance of the principle of maintaining confidence in the actions of the state. As the Constitutional Court of the Russian Federation pointed out, changes to previously established regulations that have an adverse effect on the legal status of individuals should be carried out in such a way that the principle of maintaining confidence in the law and the actions of the state is observed, which implies the preservation of reasonable stability of legal regulation and the inadmissibility of making arbitrary changes to the current system of norms[7,8].

The effect of changes that complicate the coordination of the event and the access of the audience on the next day after the signing of the normative legal act does not seem to fully comply with this constitutional principle.

In addition, there are doubts about the effectiveness of the existing regulation. The number of spectators, for example, at the matches of FC Zenit, agreed-upon by Rospotrebnadzor, is significantly lower than the one agreed-upon before the changes in the regulation of 04.12.2020[9]. It is important to mention that the reasons and grounds for agreeing-upon the number of viewers are unclear. Here is the attendance to the matches ofZenit and SKA on 05.12.2020 presented for consideration:

- 05.12.2020, Zenit – Ural (1184 spectators, 3% of the maximum capacity of the stadium)[10];
- 07.12.2020, «SKA» – «Dynamo Riga» (4296 spectators, 35% of the capacity)[11];
- 08.12.2020, Zenit – Borussia D (10,860 spectators, 16% of the capacity)[12];
- 10.12.2020, «SKA» – «Avtomobilist» (3073 spectators, 25% of the capacity)[13];
- 12.12.2020, Zenit – Dynamo (Moscow) (1909 spectators, 3% capacity)[14];
- 16.12.2020, Zenit – Spartak (1993 spectators, 3% capacity)[15].

As can be seen from the information provided, the number of spectators is not related to the size of the sports facility or its capacity. Author has not found a method for calculating the permissible number of participants to a sports event in the

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4 On measures to counteract the spread of a new coronavirus infection in St. Petersburg (COVID-19): Resolution of the Government of St. Petersburg of March 13, 2020 No 121 [Online source] // Access from the SPS «Consultant Plus». URL: http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=SPB&n=223690#023377044800001312 (date of access: 20.12.2020).

5 On signing of the Procedure of approval and conditions for holding sports events with a number of more than 50 people: Order of the Committee on Physical Culture and Sports of November 11, 2020 No. 592-p [Online source] // Access from the SPS «Consultant Plus». URL: http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=SPB&n=233675&dst=100001#022119577204680785 (date of access: 20.12.2020).

6 Volleyball «Zenit» was banned from holding a match against «Belogorya» with the audience [Online source] // «78». URL: https://78.ru/news/2020-12-05/voleibolnomu_zenitu_zapretili_provesti_match_protiv_belogorya_so_zritelyami (date of access: 20.12.2020).

7 In the case of checking the constitutionality of the provisions of Part one of Article 1 and Article 2 of the Federal Law «On Housing Subsidies to Citizens Leaving the Regions of the Far North and Equated to Them localities» in connection with the complaints of citizens A. S. Stakh and G. I. Khvalova: the decision of the Constitutional Court Of the Russian Federation from 24.05.2001 No 8-P [Online source] // Access from the SPS «Consultant Plus». URL:http://www.consultant.ru/document/cons_doc_LAW_31809/ (date of access: 20.12.2020).

8 Arapov N. A. The principle of maintaining citizens ' trust in the law and the actions of the state in the Russian constitutional law and justice: dis. ... PhD(Law)'. 12.00.02. St. Petersburg, 2015. p. 3.

9 Review of the match «Zenit» – Sptartak» [Online source] // Sports.ru. URL: https://www.sports.ru/football/match/spartak-vs-zenit/ (date of access: 20.12.2020); review of the match «Zenit» – «Dortmund» [Online source] // Sports.ru. URL: https://www.sports.ru/football/match/borussia-vs-zenit/ (date of access: 20.12.2020); review of the match «Zenit» – «Krasnodar» [Online source] // Sports.ru. URL: https://www.sports.ru/football /match/1444141/ (date of access: 20.12.2020).

10 Schedule of matches «Zenit» [Online source] // Sports.ru. URL: https://www.sports.ru/football/match/borussia-vs-zenit/ (date of access: 20.12.2020).

11 Review of the match «SKA» – «Dynamo R» [Online source] // HC «SKA». URL: https://www.ska.ru/news/view/ska-dinamo-righa-3-4-b/ (date of access: 20.12.2020).

12 Review of the match «Zenit» – «Borussia D» [Online source] // Sports.ru. URL: https://www.sports.ru/football/match/borussia-vs-zenit/ (date of access: 20.12.2020).

13 Review of the match «SKA» – «Avtomobilist» [Online source] // Sport-Express. URL: https://www.sport-express.ru/hockey/L/matchcenter/97882/protocol/ (date of access: 20.12.2020).

14 Review of the match «Zenit» – «Dynamo» [Online source] // Sports.ru. URL: https://www.sports.ru/football/match/dynamo-vs-zenit/ (date of access: 20.12.2020).

15 Review of the match «Zenit» – «Spartak» [Online source] // Sports.ru. URL: https://www.sports.ru/football /match/spartak-vs-zenit/ (date of access: 20.12.2020).

public access. It seems that the introduction of the methodology is necessary. In case of calculating the maximum number of spectators, it should be based on the maximum number of seats that can be occupied if social distance and other measures to prevent the spread of COVID-19 are observed.

In brief, it can be argued that the existing regulation has some drawbacks. Existing lack of clear methods which are used to make decisions on whether it is possible for spectators to attend official sports events and what is the permissible number arises questions. At the same time, it is possible to develop a methodology based on existing recommendations. In addition, there is a question of the actual limitations of the powers of the Committee for Physical Culture and Sports. It seems that the delegation of authority to coordinate the number of participants at a sports event exclusively to the Committee for Physical Culture and Sports is possible only with creating a methodology for calculating the maximum number of participants in a sports event. However, in general, the regulation meets the requirements established at the federal level and contributes to the fight against the spread of COVID-19.

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Optimizing the Process of Countering the Corruption of Tax Regulations under the Conditions of the Coronavirus Infection Pandemic

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ABSTRACT
The present article is devoted to the analysis of corruption in the optimization of the tax laws and regulations. An attempt is made to analyze the limits of the admissibility of anti-corruption regulation of tax legal relations by subordinate legal acts. With the development of public relations, there is an increase, alas, in illegal acts. Corruption is no exception. Thus, its variety is corruption in the field of tax legislation, where corruption poses a threat to the economic security of the country, distorting the system of fiscal state power and management, disrupting market reforms and, accordingly, distorting the law-abiding legal consciousness of Russian society. Individual representatives of the legislative branches of government sometimes use their powers and the rights entrusted to them for personal criminal gain. By its very nature, the verification of the law for compliance with the Constitution of the Russian Federation is addressed to the knowledge of the normative forming grounds of law, followed by a particular economic meaning. The inseparable link between all elements of the legal system and the Constitution of the Russian Federation, supported by the activities of the Constitutional Court of the Russian Federation, does not allow the main priority of the legal social state — constitutional legality, including the optimization of the process of combating corruption, tax rulemaking in the context of the coronavirus pandemic, to disappear.
Keywords: anti-corruption, tax legislation, bylaws, regulation of relations in the field of taxes and fees, conditions of the coronavirus pandemic, admissibility

On October 22, 2020 the President of the Russian Federation Vladimir Putin spoke at the meeting of Discussion club «Valday». According to his speech, it is necessary to create a strong, safe, invulnerable and absolutely stable system, which would ensure independence and sovereignty for Russia[1].

The speech of the President of the Russian Federation emphasizes, that the optimization of the constitutional principles protection of human and citizen rights is designed to identify and eliminate defects of law-making, that (beside direct results which are of some use for the legal system) maintain a value-based and hence integral attitude to law in the legislator. At the level of the Russian Federation's legal systems such legal awareness gets institutional support from authorities, that are not entangled in the dogmas of narrow normativism, but, on the contrary, evaluate the law for compliance with a document of higher power, which binds together legal and other social norms.

With the progress of social relations, we can unfortunately notice the increase of illegal acts. Corruption isn't an exception. Thus, its variety, corruption in the field of tax legislation, creates the threat of economic security of the state, deforms the system official state power, frustrates the market reforms and accordingly misrepresents the law-abiding of citizens. Based on the above mentioned, corruption in the field of tax legislation is a usage by a representative officer of their privileges and the rights entrusted to them for personal purposes, which contradicts the established law and the rules of rule-making.

As the practice of combating corruption in the field of tax legislation in the Russian state shows, not only the Tax Code of the Russian Federation needs protection, but also the implementation of tax law at the regional level.

In conditions of COVID-19-pandemic, the by-law regulation of legal relations in taxes-and-fees sector became widespread. So, the Government of the Russian Federation(hereinafter – the Government of the RF) issued a fairly large number of acts regulating taxes and fees (e,g., the resolution of the Government of the RF from 02.04.2020 №409 «Measures of providing stable development of economy», and some others). All these facts bring up to date the problem of by-law in taxation sector.

[1] Quote from: [online source] URL: https://sib.fm/news/2020/10/22/vystuplenie-putina-na-valdae-22-oktyabrya-pryamaya-translyatsiya (data of access: 10.02.2021).

According to part 1 of Article 1 of the Russian Federation's Tax Code[2] (hereinafter – the RF TC) the legislature of the Russian Federation on taxes and fees consists of the RF TC and federal laws on taxes, fees, and insurance contributions adopted in accordance with it. In addition, the legislation on taxes and fees in accordance with Part 4 and Part 5 of Art. 1 of the RF TC also includes legislative acts of the constituent entities of the Russian Federation and regulatory legal acts of municipalities in the relevant field.

The possibility of publishing issues by the Government of the RF, by the federal executive body, authorized to exercise elaboration of state policy and normative-legal regulation in taxes-and-fees sector and in customs, and by the local executive bodies, is provided in Part 1 Article 4 the RF TC. It should be noted that this norm contains some restrictions on the issuing of legal acts by the mentioned authorities, namely:

Possibility and cases of issue of a by-law act have to be directly specified by law on taxes and fees;

The issue of a by-law act is permissible within jurisdiction of the issuing authority only;

The issued by-law acts cannot change or supplement law on taxes and fees, unless otherwise provided bythe Article 4 the RF TC.

The possibility of issue by the RF President decrees about taxes and fees isn't provided by law. But it doesn't mean that the State Chief Executive Officer doesn't participate in legal regulation of taxation sector. It should be noted that before the RF Tax Code was accepted, the decrees of the President had played the main role in regulation of fees and payments. So, for example, the decree №1212 of the RF President dated 18.08.1996 determined particular legal directions, addressed to taxpayers, aimed at increasing tax collection. With the adoption of the RF TC in 1998the role of the President's decrees reduced. Nowadays the decrees of the President regulate common issues, for example, anti-corruption. Conformably, the President's decree№ 314dated 09.03.2004 (amended 12.04.2019)[3] established the system and structure of federal executive bodies. Beside this, according to the Article 3 of the Law of the RF№943-1 dated 21.03.1991 (amended 26.03.2020)[4]the taxation authorities shall be guided in their work by directions of legislative acts of the President of the RF. Also according to Professor M.A. Krasnovthe role of the President in economic sector is crucial. De-facto the Constitution of the RF grants unlimited power to the President including the power in economy. M.A. Krasnov calls such state of things the effect of «competence gravitation»[5]. This statement is not indisputable. The President determines domestic affairs of the state as well. We can say, he plans general principles of development and their aims, he forms a «roadmap». But a significant amount of regulation is entrusted to legislative and executive authorities of the appropriate level.

As mentioned above, the Government of the RF have the right to issue subordinate acts on regulating not only anti-corruption, but also taxation. As the Government of the RF is an authority of general competence, the competence restriction is not valid by promulgation of subordinate acts. However, other restrictions apply to acts of Government of the RF. Particularly, the Government of the RF doesn't have the right to issue decisions aimed to amend or to supplement of the PF TC's norms. The Plenum of the Supreme Arbitration Court specified in paragraph 20 of Decree №33 dated 30.05.2012 that by considering by courts disputes concerning reasons of use of reduced tax rate (10%) by sale of provisions and other goods, it have to be taken into account, that according to paragraph 1 Article 4 of the RF TC the Government of the RF doesn't have right to impose additional restrictions to the rate's use, if they don't follow clauses of paragraph 2 Article 164 of the RF TC[6].

The federal executive bodies also possess the right to issue by-law acts in the field of anti-corruption and in taxation sector. By promulgation of regulative acts it is necessary to comply with competence restriction. So, according to Part 2 Article 4 of the RF TC a federal executive authority endowed with control and supervision in sector of taxes and fees, other authorities specified in mentioned norm, have no right to issue legal acts in the field of taxes, duties and insurance fees. Such authority is Federal Tax Service (hereinafter – FTS, that is why it has no right to issue legal acts in the field of taxes, fees and insurance fees[7]. At the same time, FTS often clarifies the taxation law. In conformity with Constitutional Court of the Russian

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2 The Russian Federation Tax Code (Part 1) of 31.07.1998 № 146-Federal Law. Redaction from 23.11.2020 (with amendments coming onto force after 01.01.2021) [online source] // Access from St. Petersburg «Consultant Plus». URL: http://www.consultant .ru/documents/cons_doc_LAW_327521/17d01b2574b70fa72397256221039ccf439d4981/#dst100115 (data of access: 12.02.2021).

3 About the system and structure of federal executive authorities: the decree of the RF President from 09.03.2004 № 314 (redaction from 20.11.2020) [online source] // Access from St. Petersburg «Consultant Plus». URL: http://www.consultant.ru/documents/cons_doc_LAW_46892/ (data of access: 12.02.2021).

4 About tax authorities of the Russian Federation: The Russian Federation Law from 21.03.1991 №943-1 (the latest redaction) [online source] // Access from St. Petersburg «Consultant Plus». URL: http://www.consultant .ru/documents/cons_doc_LAW_49 (data of access: 12.02.2021).

5 M. A. Krasnov. The President in the Economics: the effect of «the competitive gravitation» // Social sciences and modernity. 2014. №1. Pages 77-92.

6 About some questions facing the Courts of Arbitration by considering the added value taxes cases: the resolution of the RF Court of Arbitration Plenum from 30.05.2014 №33 [online source] // Access from St. Petersburg «Consultant Plus». URL: http://www.consultant.ru/documents/cons_doc_LAW_164585 (data of assess: 10.11.2020).

7 The RF Court of Arbitration Decision from 19.03.2010 according the case № BAC-9507/09 [online source] URL: http://krasnodar.arbitr.ru/files/%D0%9E%D0%B1%D0%B7%D0%BE%D1%80%20%D0%BF%D0%BE%20%D0%9D%DO%9F%D0%90%20%2013.pdf. (data of access: 09.11.2020).

Federation, such clarifications are de-facto mandatory for implementation by tax authorities under the principle of official subordination[8].

There is a general discussion in the science of law concerning the role of fiscal authorities' acts. Rather often the Ministry of Finance of Russia and FTS of Russia issue acts, containing clarifications about both anti-corruptional and tax legislation. Such acts have to be issued on the assumption of some demands of part 1 Article 4 the RF TC. At the same time the question is, to what extent they are obligatory.

In the letter№03-02-07/2-138dated August 7, 2007, the Ministry of Finance stated, that rather often clarifications from Russian Ministry of Finance's letters are considered to be a compulsory norm. But further the Ministry of Finance explains, that the written clarifications are not compulsory for tax authorities, taxpayers and fiscal agents – they only have to be accepted by parties of taxation system equally with other experts' publications in this field[9]. However, this explanation contradicts directly to paragraph 5 Part 1 Article 32 of the RF TC, because according to it tax authorities are obliged to follow written explanations of the Russian Federation's Ministry of Finance on the application of the Russian Federation's legislation on taxes and fees. This defect can be partly compensated by dividing the explanations of the Russian Federation's Ministry of Finance into rule-making: 1) ones granted to tax authorities; 2) ones granted to particular persons because of their appeal. So, the Supreme Court of the RF specified that the tax authorities are not obliged to follow the replies of the Ministry of Finance addressed to particular applicants. Perhaps is what was meant in the letter from August, 7 2007. But anyway the Ministry of Finance's clarifications exist, but the consequences of their application are different, including the fields of anti-corruption and tax legislation.

In court practice, the courts seldom consider the letters of the Ministry of Finance of the RF to be regulatory. So, in 2016 a legal entity tried to dispute a clarification of the Russian Federation's Ministry of Finance, which de-facto authorized the inspections of all deals by any tax authority under the pretext of necessity to elicit facts of manipulation with prices. The Supreme Court of the RF refused to consider the letters of the Ministry of Finance to be regulatory, because it doesn't go beyond the scope of appropriate interpretation of tax law and doesn't abolish any legislation norms about taxes and fees[10].

However, in case of application of FTS's clarifications the taxpayer isn't guilty and accordingly isn't responsible for committing a breach of tax law.

It should be noted, that the clarifying acts of the Ministry of Finance and of the RF TC contribute to achievement of definiteness in taxation. According to A.V. Demin, the main reasons of formal controversies are the objective necessity of concretization and specification of too general taxation norms, the removal of gaps in tax law for lack of stable court practice and conformation of the tax norms with new changing conditions. Beside this, he refers to foreign practice of use of tax law clarifications as the source of tax law. The obvious advantage of fiscal bodies' clarifications is their simplicity. In the tax norms are usually rather difficult to understand, and under these circumstances the tax authorities help the amateurs in taxation to understand the tax norms[11].

In practice, when issuing the subordinate act (including anti-corruption in the sector under review), the parties of this rule-making often forget the requirements of paragraph 2 Article 5 of the RF TC – the absence of retroaction. So, the Volgograd Region's Committee of State Property Administration (VRCSPA) to the order from June 27, 2018 amended the order from October 27, 2015. According to these amendments the order of cadastral value was changed. Beside this, the mentioned amendment was attached the retroaction – paragraph 2 of the Order from June 27, 2018 determines, that the order comes into force on the expiration of 10 days after it has been officially published, and is valid for relations originate after January 1, 2016. The administrative court in banc resolved that this clause is illegal because of its contradiction to Part 2 Article 5 the RF TC[12].

Thereby by-law rulemaking in tax and fees sector is permissible and has a positive effect, including the requirements of the President's decrees on anti-corruption. At the same time there are some problems to determine the limits of such rule-making. And the restrictive criteria prescribed in Article 4 the RF TC are not quite clear.

In every social law-governed state there is a distance between rule-making prescriptions and application of law norm. The constitutional control authorities have been protecting the Constitution of the Russian Federation for more than twenty

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[8] The case about the control of constitutional conformity of the paragraph 1 part 1 Article 2 of the Federal Constitutional Law «About the Russian Federation's Constitutional Court» and the third paragraph of the sub-clause 1 clause 1 Article 342 of the Russian Federation's Tax Code because of the complaint of the public corporation «Gazprom neft»: the resolution of the RF Constitutional Court from 31.03.2015 №6-П [online source]. URL: http://legalacts.ru/doc/postanovlenie-konstitutsionnogo-suda-rf-ot-31032015-n (data of access: 10/11/2020).

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years. They provide the supremacy of constitutional law. The sequential removal of defects in law field is incontestable. The process of constitutional optimization per se, mentioned by the Russian Federation's President on October 22, 2020at the meeting of Discussion club «Valday» is being accomplished due to the actions of the Constitutional Court of the Russian Federation, strengthens the supremacy of Constitution of the Russian Federation, fulfils at the same time its regulating potential and brings the rule-making and the actions of the Russian Federation to a qualitative new level[13].

Therefore the optimization anti-corruption and rule-making in tax sector in conditions of COVID-19 pandemic, volume and tempo of mentioned rule-making are unprecedented and multiple; a new technology appears and is supplanted by another at once; the new regulation objects appear, the decisions of the Constitutional Court of the Russian Federation have multiplied recently. But nowadays the keeper of the highest – and that's why constant – features of constitutional law is exactly the constitutional control. Inherently the inspection if the law conforms with the Constitution of the Russian Federation is directed to cognition of regulatory constituent base of law with the subsequent particular economic meaning.

Supported by the Constitutional Court of the Russian Federation, indissoluble connection between all elements of law system and the Constitution of the Russian Federation preserves the main priority of the social law-governed state – constitutional lawfulness, including the optimization of anti-corruption and rule-making in tax sector in conditions of COVID-19 pandemic.

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[13] Supra note 1.

Selected Issues of Arbitrability of Disputes Related to the Purchase of Goods for State and Municipal Needs

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ABSTRACT
The article highlights issues related to determining the jurisdiction of disputes related to the purchase of goods, works and services to meet state and municipal needs. The author comes to the conclusion that the law enforcement practice and the positions of the highest courts of the Russian Federation confirm the possibility of considering disputes arising from contracts related to supplies for state and municipal needs in the framework of arbitration proceedings.
Keywords: purchase of goods, works, services to meet state and municipal needs, jurisdiction, arbitrability, Supreme Court of the Russian Federation, Constitutional Court of the Russian Federation

Issues related to the relationship between «private» and «public interest» in civil law remained the subject of scientific debates. Traditionally, we are accustomed to associate private law with the interests of individuals, and public law with the interests of the state. However, this is not the only one correct approach. Thus, G.D. Considering and justifying the social essence of law, D. Gurvich said that «... private law along with individual law can include many layers of integrating law (social law), and subordinating law, «public law», can include and does indeed often include significant areas of individualistic law and order...»[1]. F. Shereshenevich argued that civil law aims to protect the interests of the society by protecting the interests of an individual[2].

The contradiction of scientific approaches has entailed similar contradictions in the legislation and the lack of uniformity in its interpretation. In particular, it concerns the issue of jurisdiction of disputes related to the purchase of goods and services to meet the state needs. The court order which are issued as a result of the resolution of such disputes are very heterogeneous. The court rulings issued as a result of the resolution of such disputes are very heterogeneous. It is no coincidence that the Supreme Court of the Russian Federation, having considered the case No. A33-21242/20183[3], drew attention to the fact that it is necessary to distinguish between the legal relations regulated by the Law on Procurement of Goods, Works, and Services by Certain Types of Legal Entities No. 223-FL[4], on the one hand, and the Law on the Contract System in the Field of Procurement for State and Municipal Needs No. 44-FL[5], on the other (Ruling No. 302-ES19-16620)[6].

The Supreme Court of the Russian Federation and the Constitutional Court of the Russian Federation recognize the arbitrability of disputes arising from these legal relations, that is an important step in resolving issues related to purchase for state needs.

The Supreme Court of the Russian Federation considered a case in cassation between two joint – stock companies-JSC «Mosteplosetstroy» and JSC «Mosinzhproekt» (the city of Moscow owned hundred percent of the last-named company's shares), which concluded a general contract agreement, contained an arbitration clause obliging the parties to

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2 Shershenevich G. F. Textbook of Russian Civil Law. Moscow, 1911. P. 5.
3 Arbitration Court of the Krasnoyarsk Territory: decision of January 25, 2019, case no. A33-21242/2018. Krasnoyarsk. The operative part of a resolution was announced at the court hearing on January 18, 2019. In full, the court decision was made on January 25, 2018. [Online source]. URL: https://kad.arbitr.ru/Kad/Card?number=A33-21242/2018 (date of request: 10.11.2020).
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5 On the contract system in the field of procurement of goods, works, and services for State and Municipal Needs: Federal Law No. 44-FL FL of 05.04.2013 [Online source] // Access from the RLS «Consultant Plus». URL: http://www.consultant.ru/document/cons_doc_LAW_116964/ (date of request: 18.02.2021).
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apply to the arbitration court in case of disputes. In 2016, the failure of Mosinzhproekt JSC to fulfill its obligations resulted in arbitration proceedings, followed by an appeal to the arbitration court for enforcement of the arbitration court's decision. JSC «Mosinzhproekt» directed a cassational appeal to the board of the Supreme Court of the Russian Federation, referring to the special legal nature of the legal relations between the parties to the dispute and in accordance with the federal law «On Purchase of Goods, Works, Services by certain Types of Legal Entities» No. 223-FL, insisted that the purchase rules for state and municipal needs should be applied in these legal relations.

During the consideration of the cassation appeal the economic Board of the Supreme Court suspended the proceedings and appealed to the Constitutional Court of the Russian Federation with a request regarding the arbitrability of such disputes. The Constitutional Court of the Russian Federation indicated in its decision[7] that the subjects of law covered by the statute of Federal Law No. 223-FL, do not act as administrative subjects, but as equal participants in civil turnover, acquiring all the relevant rights and obligations when concluding public procurement contracts. The ability to transfer a dispute from a contract to an arbitration court is an integral part of the principle of freedom of contract, which means that the parties to the procurement contract both for state and municipal needs also have this opportunity.

During the consideration of the dispute by the Supreme Court of the Russian Federation, the Association of Participants for Assistance in the Development of Arbitration Proceedings (Arbitration Association) sent a letter to the Supreme Court, which contained an overview of the arbitrability of disputes involving public entities in foreign countries. The letter also noted that the European Convention on Foreign Economic Arbitration, to which the Russian Federation is a party, explicitly provides for the right of «legal entities of public law» to conclude arbitration agreements while conducting foreign trade transactions[8].

The review pointed out that the jurisprudence of individual States confirms the arbitrability of disputes, regardless of the presence of a «public element»[9]. Thus, the High Court of London confirmed the arbitrability of the dispute in the case of Nori Holdings ltd. and ors. v. Public Joint-Stock Company Bank Otkritie Financial Corporation[10] , noting in particular that disputes arising from public procurement contracts are always arbitrable. The practice of hearing such cases in Brazil is based on the fact that any disputes arising from legal relations that have a certain monetary value in one way, or another will be considered arbitrable, as confirmed by the decisions of the Supreme Court of Brazil[11]. Similarly, the arbitrability of disputes is regulated in the legislation of Sweden[12] and Finland[13], where it is assumed that the arbitral tribunal can consider any dispute by agreement of the parties.

In July 19, 2018 Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation, having considered in cassation the case on the claim of JSC Mosteplosetstroy against JSC Mosinzhproekt, based on the earlier order of the Constitutional Court of the Russian Federation, decided to enforce the decision of the arbitration court, leaving in force the decisions of the courts of the first and second instances, pointing to the equality of the parties to the contract on procurement for state and municipal needs, as well as the applicability to their relations of the principle of freedom of contract[14].

Thus, we can say that the Supreme Court of the Russian Federation confirmed by its decision the thesis that civil law regulation can fulfill its main purpose in a harmonious combination of private and public interests[15].

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Banking Cybercrime as One of the Main Problems of Modern Society[1]

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ABSTRACT
This article examines the specifics of banking cybercrimes, their victims, as well as criminals who commit these crimes. The research method is based on statistical data from the Bank of Russia. The author concludes that improving the economic and legal literacy of the population is the most effective way to reduce the trend of banking cybercrime.
Keywords: human factor, economic illiteracy, psychological influence, theft, prevention methods, fraud prevention, implementation methods

Cybercrime is one of the main forms of crime, which gains momentum. The predominant increase of cybercrime in the twenty-first century is observed together with the widespread introduction of computer technologies into society. This type of crime differs from the other in that the attacker's goal is not some small amounts of money, which constitute «theft» in most crimes, but the theft of funds, which turnover usually begins with several hundreds of thousands and can reach billions of rubles, i.e. cybercrime. Such amounts are primarily due to the fact that the person committing the crime usually carefully chooses the victim, based on his or her earnings.[2] Hardly anyone is immune to the theft of funds from accounts. There are cases in the criminal history, when the well-known banks employees transmitted information about card holder, including his passport data and other information necessary for transferring money to the fraudster's account. Fraudsters who specialize in the theft of money from victims' cards use a certain fraud scheme. Bank employee that is involved in this scheme is looking for a customer who has not used their bank card for a long time but has a certain amount of money in his bank account. This employee receives an agreed amount for transferring passport data and bank card information to the fraudster. !!!A fraudster commits fraud with passport data and a card, as well as certifies a power of attorney by an involved in the scheme notary, gets the opportunity to withdraw funds from the victim's card by a third party. Then money are stolen from the account. It is almost impossible to prove, and even more so to return money stolen under this scheme.

Banking cybercrime is a rapidly developing industry. To have something to do with this bank is not even necessary in order to steal from the victim's account[3]. A fraudulent scheme that resulted in the theft of more than 5 billion rubles from the Russians bank accounts in 2020 is especially developed at the moment according to the Center for Monitoring and Responding to Computer Attacks in the credit and financial sphere. Financial and legal illiteracy of the population is the main reason for such overwhelming figures. These two facts are confirmed by the clarification of this fraudulent scheme: subscriber gets a call from allegedly well-known bank's employee that simply asks the question: «Have you made transfers in the amount of several thousand rubles in the past hour?» The victim replies that no transactions were committed. Further, the alleged bank employee exerts moral pressure on the subscriber by hurrying and assuring the client that he has to tell the card number and the secret number on its back otherwise the remaining amount in the subscriber's account will be withdrawn directly by the fraudsters. The victim, being under a strong influence, tells everything that is required. The outcome of this fraud is obvious known[4].

What is the reason for the five-billion-dollar amount of money stolen by fraudsters? First, as we said before, this is financial illiteracy. For example, Sberbank users know that an official bank representative does not call subscribers from a regular number, since this bank uses an official phone number to prevent cybercrimes[5].Secondly, people who are more susceptible to psychological influence than others are more likely to fall for the fraudster's tricks. In turn the latter think out the

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1 Academic adviser: Nikolay Aleksevich Lipsky, Associate Professor of the Department of Criminal Law Disciplines, Peter the Great St. Petersburg Polytechnic University, St. Petersburg, Russian Federation.
2 See: T. Krivenko. Investigation of crimes in the credit and finance sphere /Vol. Kryvenko, E. Kuranova //Legality. 1996. № 1. Pp. 19-25.
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5 Satuev R. S., Shraer D. Ya., Yaskova N. Yu. Economic crime in the financial and credit system. Moscow: Center for Economics and Marketing, 2000.

course of events, paying special attention to details (even background noise during the conversation between scammers and the victim completely copies the work of the bank – you can hear the voices of call center employees).

A question of concern to all those affected by this financial fraud: who are the once cyber-criminals who can so skillfully withdraw billions of rubles from the victims' accounts? The answer to this question is very non-trivial. Prisoners are the ones who make the phone calls most frequently. This information is presented in the article of the Center for Monitoring and Responding to Computer Attacks in the Credit and Financial Sphere (FinCERT) of the Bank of Russia[6]. Phones, routers, chargers, headphones, as well as notebooks with the names of the victims were found during a search of cells in one of the Moscow prisons. Based on the above information, it should be concluded that the prison authorities at least relate indirectly to the fraudulent calls. The Prosecutor's Office of the Russian Federation proposed to allocate money in the amount of 10 million rubles for the installation of devices capable to jam the telephone signals in prison territories. Of course, this is one of the most effective ways to solve the problem in this case.

The most difficult and almost impossible aspect of this situation is the compensation to the bank's customers. Legally, the subscribers voluntarily transferred personal information of their cards to cybercriminals, that is why to recover money is even more difficult. Banks reimbursed customers only 15%, or 932 million rubles of stolen funds' total amount. The scale of the problem is colossal, there are practically no ways to solve it – all this is disappointing statistics from economic experts[7].

In conclusion, it should be noted that citizens who have been influenced by cybercriminals specializing in banking operations are partly to blame. Carelessness and illiteracy contribute to an increase in the total number of stolen money in our country[8]. To reduce the number of crimes in this area, it is necessary to improve the financial literacy of the population, as well as to inform the older generation which is more than others susceptible to psychological influence from cybercriminals[9] about the presence of this problem. Our country will be able to cope with such a global problem as cybercrime in the banking sector only with the joint assistance of experts and the population.

Based on Chapter 28 of the CC RF «Crimes in the field of computer information», which does not have rules for regulating cybercrime in the banking sector, we can say that The Criminal Code of the Russian Federation does not contain rules of law aimed at preventing fraud with bank accounts. Crimes committed in this area are most often referred to Article 159.6 «Fraud in the field of computer information», the maximum penalty in which is one and a half years of imprisonment. At the moment, there is no article in the CC RF that would be aimed at resolving specific offenses in the field of embezzlement of funds from bank cards by submitting information by a bank employee and disposing of false information. The only way to reduce the trend of crime in this area is to introduce legal norms that cover this problem.

Based on the articles «Illegal access to computer information» (Article 272), «Creation, use and distribution of malicious computer programs» (Article 273), «Violation of the rules for the operation of means of storing, processing or transmitting computer information and information and telecommunications networks» (Article 274), considered during the analysis of existing legal acts regulating banking cybercrime, it was found that the Criminal Code of the Russian Federation does not contain articles that fully implement legal regulation of relations in the field of banking cyber attacks. The only sure way to solve the problem of widespread and rapid spread of banking cyber crime in the Russian Federation is the adoption of a new article of the Criminal Code, which will contain a hypothesis and a disposition covering this topic, as well as the corresponding punishment provided for in the article. The introduction of new legal norms that contribute to the regulation of legal relations in this area is the only and necessary measure that can lead to the elimination of banking cybercrime.

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