ТЕОРЕТИЧЕСКАЯ И ПРИКЛАДНАЯ
ЮРИСПРУДЕНЦИЯ
Theoretical and Applied Law

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

Thomas Jefferson

2021 № 2(8)

ISSN 2686-7834

Table of Contents

Opening Remarks by the Editor-in-Chief

Destiny of Scientific Discussions in the Digital Age of the Law and Order

Nowadays, technological development driven by digital transformation of society greatly affects the system of justice, and research challenges widely discussed in the legal community come to the fore. In our opinion, these challenges together with activities of legal scholars are determining legal policy, in general, and law enforcement practice, in particular. It should be noted that a profound digitalization to some extent has turned to be unexpected, unthinkable issue at the beginning of the last decade, when we saw emergence of heated discussions about ways and prospects for further development of law and state in the postmodern era. For instance, your present correspondent one spoke about essential characteristics of the post-modern state, believing that intellectual motifs to consider their contents had not yet been formed and would hardly be formed in the near future[1].

It is easy to see that the concept of "post-modernity" in theoretical discourse has had ambiguous connotations, indicating a crisis of uncertainty in scientific and practical spheres, characterizing the latest stage in the evolution of the system of justice, started in the 1980s. This uncertainty hindered formulation of any well-grounded scientific conclusions or forecasts for further development, and has long been in the center of focus among Russian scholars. For example, I. L. Chestnov wrote, "if jurisprudence wants to overcome the long-running crisis of dogmatization and reification of law, we must look for new ways and find them in the postclassical research program"[2].

No wonder that is such context digitalization has been attracted attention of researchers who realized that it might be an escape from an ideological and methodological deadlock both in the general theory of law and specific legal disciplines[3]. It should be pointed out that the issues of digitalization were first discussed in terms of digital democracy, which manifested possibilities of digital technologies applied to regulate political and legal relations[4]. Despite some skepticism, demonstrated by the scientific community, who doubts effectiveness of electronic procedures as a means of making decisions and forming a common will, we are positive that these procedures indicate a shift of legal communication into a brand new stage of evolutionary development.

However, it should be remarked that political deliberation that requires active participation of society members and strives to establish a universal agreement (consensus) of their opinions[5], is very difficult to be digitalized, to say nothing of replacing man — an existentially and socially free creature — with artificial neural networks. It might appear more fruitful to initiate discussion about digital transformation of subjective civil rights, since it can result in a range of interesting conclusions about their legal nature and essence, thus, making a great contribution to development of civil science[6].

Despite intensive efforts of researchers, digital transformation of subjective civil rights (first of all, property and obligation) is still very obscure; but nevertheless, scholars already can make assumptions about modifications in civil law contracts that require minimal activity of counterparties (the so-called "smart contracts")[7]. Another very promising trend is dynamics of the civil law system and digitalization of personal non-property rights, which promotes emergence of new legal communication participants and new legal entities previously possessing no legal personality.

What is meant here is artificial intelligence, which in the traditional paradigm has been treated as a database and an object, rather than a subject of civil rights. We believe that identification of the role of artificial intelligence in the system of modern law and order requires either total rejection of the concept of freedom as a driving force of legal communication, which would be detrimental to law as such, or rethinking of the concept of freedom to confirm its timeless value under new conditions. It seems that the last variant is more preferable, since it opens global prospects for evolution of the system of

---

1 See: Razuvaev. N. V. State in the Evolutionary Dimension: Monograph. Moscow: Yurlitinform Publishing House, 2018.P. 438.

2 Chestnov I. L. Postclassical theory of law: monograph. St. Petersburg: Publishing House "Alef-Press", 2012. P. 116.

3 See, for instance: Talapina E.V. Law and Digitalization: New Challenges and Prospects // Journal of Russian Law. 2018. No.2 (254). P. 5–17; Saurin A.A. Digitalization as a Factor in the Transformation of Law // Constitutional and Municipal Law. 2019. No.8. P. 26–31; Kozhokar I.P. Influence of Shortcomings on Judicial Enforcement in the Era of Digitalization of Law // Legal Science. 2019. No.7. P. 9–12.

4 See: Vaskova M.G. Problems of development and Implementation of Electronic Democracy in the Electronic State // Russian Legal Journal. 2010. No.4 (73). S. 47–50; Chebotarev V.E., Konovalova E.I. E-Democracy, E-Government, E-Democracy at the Current Stageo Development of the Russian Federation // Legal World. 2012. No.7. P. 35–38.

5 See: Rawls J. Political Liberalism. New York: Columbia University Press, 1993. P. 5; HabermasJ. Three Normative Models of Democracy // Democracy and Difference/ed. S. Benhabib. Princeton: Princeton University Press, 1996. P. 29; Mouffe Ch. Deliberative Democracy or Agonistic Pluralism [Electronic resource] // URL: https://www.ihs.ac.at/publications/pol/pw_72.pdf (date date of access: 14.06.2021).

6 See: Sannikova L.V., Kharitonova Yu.S. Legal Essence of New Digital Assets // Law. 2018, No.9. P. 93–95; Vasilevskaya L.Yu. Digital Rights as a New Object of Civil Rights: Problems of Legal Qualification // Economics and Law. 2019. No.5 (508). P. 3–14; Abramova E.N., Braginets A.Yu. On the Concepts of Ownership and Property in the Digital Era // Economics and Law. 2020. No.6 (521). P. 12–21, etc.

7 See: Saveliev V.A.. Contract Law 2.0: "Smart" Contracts as the Beginning of the End of Contract Law // Bulletin of Civil Law. 2016. No.3.P. 48.

justice in the era of high technologies that sometimes facilitate paradoxical illusions that society can fully eliminate a human factor from its development. However, we think that that everything above indisputably proves that the law serves the last stronghold of humanity in the rough waters of technological determinism, and makes grounds for subtle, but nevertheless confident optimism that human dignity and freedom in the digital age will remain as essential as before.

So, we can see that digital transformation of society, law and state has breaded new and unexpected development prospects, but also bought new challenges to face with. These challenges, first of all, include de-personification, anonymization and, as a result, loss of mutual trust of participants in legal communication. Therefore, some researchers are tempted to claim not only the "death of the subject", which is not a new trend, since such views were expressed by F. Nietzsche and M. Foucault[8], but also the end of legal science, which, as they think, will be unnecessary when the notorious "neural networks" will supersede an autonomous will of individuals requiring theoretical and philosophical comprehension.

In this context, the editorial board see the main mission of the journal "Theoretical and Applied Jurisprudence" as stimulation of productive academic discussions in every possible way, despite a false alarmism that predicts soon exhaustion of legal knowledge. The board firmly intends to resist attempts of dragging political slogans under the shelter of "pure science" and replacing the research agenda with ideological one. We are guided by the principle of objectivity, formulated by M. Weber, who stated: "A journal cannot be an arena of "objections", replies and rebuttals; but in its pages no one will be protected ... from being subjected to sharpest factual scientific criticism. Whoever cannot bear this or who takes the viewpoint that he does not wish to work in the service of scientific knowledge with persons whose other ideal are different from his own,, is free not to participate"[9].

That is why our journal will always keep away of those who seek to discredit the idea of human rights and freedoms enshrined in the Constitution of the Russian Federation[10], and use the concepts of academic rights, freedom of opinion, thought and speech solely for the purpose of asserting their own ideological positions. "Theoretical and Applied Jurisprudence" journal will keeps a keen eye on urgent issues of the general theory of law and specific legal disciplines that will clarify the laws of development of the system of justice in terms of digitalization. We believe that the contents of this issue presented hereby indisputably prove this.

Editor-in-Chief
Nikolay Razuvaev

[8] See: F. Nietzsche. Merry Science // F. Nietzsche. Complete Works in 13 volumes. Moscow: Publishing House "Cultural Revolution", 2014. V. 3. P. 440; Foucault M. Words and Things. Archeology of the Humanities. St. Petersburg: Publishing House "A-cad", 1994. P. 404; Renault A. The Era of the Individual. On the History of Subjectivity. St. Petersburg: Publishing House "Vladimir Dal", 2002.

[9] Weber M. "Objectivity" of socio-political and socio-scientific knowledge/M. Weber // Selected works: Protestant Ethics and the Spirit of Capitalism. Ed. 2nd, rev. and add. Moscow: Publishing House "Russian Political Encyclopedia", 2006. P. 279.

[10] See: Constitution of the Russian Federation. Adopted by popular vote on 12.12.1993 with amendments approved during the popular vote on 01.01.2020 // SZ RF. 2020. No.11. Article 1416.

Text-Driven Jurisdiction in Cyberspace

Mireille Hildebrandt
Research Professor on 'Interfacing Law and Technology' at the Vrije Universiteit Brussel; Full Professor of Smart Environments, Data Protection & the Rule of Law, Radboud University Nijmegen;
m.hildebrandt@cs.ru.nl

ORCID 0000–0003–4558–9149

This article was previously published on osf.io (DOI 10.31219/osf.io/jgs9n). The article is a draft chapter of a future author's book. The Editorial Board of the journal "Theoretical and Applied Law" received the right to publish the translation of the article into Russian, for which we are very grateful to the author. The text in English can be found at the specified link.

Educational Technology of the Liberal Arts and Sciences Model Application in the Training of Lawyers

Marina A. Dorofeeva
PhD in History, Associate Professor, Law School, Far Eastern Federal University, Vladivostok, Russian Federation; dorofeeva.ma@dvfu.ru

ABSTRACT
This article describes the methods of teaching critical thinking to law students. Problems of the lack of functional literacy and weak critical thinking, which are crucial for successful professional activity in the conditions of the fourth industrial revolution, among junior students are presented. The authors propose to apply the methods of the Liberal Arts and Sciences within the disciplines of theory of state and law, history of state and law, philosophy of law, history of political and legal doctrines, history of legal science, etc. to correct functional illiteracy and form critical thinking.
Keywords: legal education, liberal arts and sciences, soft skills, critical thinking, functional illiteracy

In the 21st century, due to the reality of the fourth industrial revolution, legal profession and legal education (like all social institutions) find themselves in the world of VUCA — a world of variability, uncertainty, complexity and ambiguity. The requirements for employees imposed by the fourth industrial revolution are also reflected in the system of higher education.

Firstly, modern society declares Talent Management. K. Schwab is convinced that in the future talent will be a critical factor of production to a greater extent than capital. The labor market will be increasingly divided into segments of low-skilled / low-paid and high skilled / high-paid[11]. Nowadays it is not the firm that chooses the person, but the person who chooses the firm[12]. The fourth industrial revolution generates the principle of uniqueness of the creator of a product / service as a driver of success. There is a different worldview, a new vision, based on the fact that employees are perceived as a strategic resource that forms the uniqueness. In this regard, the individuality of a professional creator comes out in the first place. Thus, any higher education system has a primary task to disclose a personal potential in addition to the formation of professional knowledge and qualities.

Secondly, the challenge to Russian higher education is compounded by the problem of new competition. In a number of professions, there is already competition between a person and AI. WEF experts predict that the ratio of tasks performed by people and machines in the basic twelve industries in 2018 (on average 71% and 29%) will change significantly in favor of the latter by 2022 (58% and 42%, respectively). Among others, the working places and professional roles of lawyers fell into the category of 'Redundant', that is, they can be subject to automation[13].

Thus, the question arises: what should a graduate of the Faculty of Law (or a law university) be able to do in order self-realize in the knowledge economy and successfully compete with an AI?

Based on the conducted research, WEF experts claim that the following skills are already in high demand in the labor market:

- analytical thinking and the ability to generate innovations;
- technological design skills;
- design technology and programming skills;
- skills of analysis and evaluation of systems.

However, the most competitive will be professionals with developed 'human' skills, since it is not expected that they can be automated in the near future, such as:

- creativity, originality and initiative;
- critical thinking, detailed analysis;
- comprehensive problem solving;

[11] See: Schwab Klaus. The Fourth Industrial Revolution. What It Means and How to Respond [Electronic resource]// Foreign Affairs: multiplatform media organization. December 12, 2015. URL: http://www.foreignaffairs.com/about-foreign-affairs (date of access: 02.09.2019).

[12] See: Usheva M. N. Talent management in modern human resources management [Electronic resource] // Marketing and management of innovation. 2011. No.3.Vol. 2. pp. 176–177. URL: http://mmi.fem.sumdu.edu.ua/sites/default/fi les/mmi2011_3_2_173_179. pdf (date of access: 21.09.2109).

[13] World Economic Forum. Insight Report "The Future of Jobs. Report 2018" [Electronic resource]. P. IX. URL: http:// www3.weforum.org/docs/WEF_Future_of_Jobs_2018.pdf (date of access: 21.09.2019) (date of access: 21.09.2019).

- generating ideas;
- the ability to convince, the ability to communicate and negotiate;
- flexibility, emotional intelligence;
- leadership and the ability to exert social influence.

Also, the ability to learn quickly and plan the educational strategy will be important for the employer[14]. Therefore, an urgent task of higher legal education is the formation and development of soft skills as a combination of critical, creative and project thinking, the ability to work in a team, the ability to communicate in any situation, the ability to build multicultural communications, knowledge of foreign languages.

Functional illiteracy is also a serious global problem seen as the inability to read and write at the level necessary to perform the simplest social tasks; including the inability to read the text, find the information necessary for work, understand the meaning of a book or instruction read, write a logically coherent text[15]. It makes it impossible to form critical thinking as a system of judgments used to analyze things and events with the formulation of reasonable conclusions and allows you to make reasonable assessments, interpretations, as well as correctly apply the results obtained to situations and problems[16].

The study of generational features (using the example of FEFU Law School students) shows the problem of functional illiteracy with at least a fifth of first-year students[17]**.** As a result, this leads to the inability of students to study university programs effectively that is the inability to form conceptual thinking, self-study and carry out research activities, the development of which is a criterion for obtaining a high level education.

The existing system of Russian higher education, including legal education, is, in the author's opinion, an unsuccessful imitation of American and European models, which arose as a result of mechanistic borrowing within the framework of joining the Bologna process.

Russian universities were forced to squeeze the traditional five-year Soviet model of graduate training into four years. At the same time, the industrial logic of training specialists (relevant for the 20th century) was preserved and the fundamental principles and values of the foreign system from the point of view of organization and approaches to training were not perceived. As a result, we have a linear educational process, like a conveyor production, when a student passes a fixed set of non-competing courses within the framework of stable and inert educational programs. The subjects designed to form the skills of effective thinking, collaboration, leadership and self-learning have a low status. Considering the above, this simulation model cannot meet the modern needs of graduates and employers: the educational program in this format is not able to change, it is difficult to update the content, it is straightforward, that is, it evaluates the student in a rigidly established sequence of exams, than reproduces the practices of endless re-examinations, infantilizing the student and professionally deforming the teacher[18].

At the present stage there is an awareness of the defectiveness of such a simulation system. The higher education in the Russian Federation is waiting for another serious transformation. In accordance with Federal Law No.273 of 29.12.2012 'On Education in the Russian Federation', the Address of the President of the Russian Federation to the Federal Assembly in 2020, Instructions of the President of the Russian Federation Pr-294 p.2a-16 of 26.02.2019, Pr-113 of 24.01.2020, order of the Ministry of Science and Higher Education No.602 of 23.04.2020 'On Coordinating Councils in Education Spheres', the reform of the architecture of educational programs is to start.

The State Duma of the Russian Federation approved amendments to the Federal Law 'On Education in the Russian Federation' in the first reading. In Article 11, Part 5, it is proposed that federal state educational standards (FSES) of vocational education can be developed by levels of education or by professions, specialties and areas of training of the corresponding levels of vocational education or enlarged groups of professions, specialties and areas of training, as well as by areas and types of professional activity. The note to the project explains that students are now given the opportunity to obtain several qualifications as part of mastering the main professional educational programs[19]**.** The Ministry of Science

---

14 Op.cit.

15 Gavrilyuk, V. V., Sorokin, G. G., Farakhutdinov, Sh. F. Functional Illiteracy in the Context of the Transition to the Information Society. Tyumen': TyumGU. 2009. p. 9–10.

16 Facione Peter A. Critical Thinking: A Statement of Expert Consensus for Purposes of Educational Assessment and Instruction. Executive Summary [Electronic resource] // The Delphi Report. The Complete American Philosophical Association Delphi Research Report.P. 4. Queensborough Community College.N-Y. 1990. URL: http://www.qcc.cuny.edu/SocialSciences/ppecorino/CT-Expert-Report.pdf (date of access: 25.01.2019).

17 See: Dorofeeva, M. A. Strategies of Independent Work of First-Year Students of the FEFU Law School As a Manifestation of the Characteristics of Generation Z // IV Pacific Legal Forum, dedicated to the celebration of the 60th anniversary of continuous legal education at the Far Eastern Federal University and the 99th anniversary of legal education in the Far East of Russia. October 2–4, 2018. Vladivostok: Far Eastern Federal University. 2018. P. 79.

18 See: Shcherbenok A. University Management. The educational process at the university: bachelor's degree. Russian baccalaureate as an educational pipe: an online course. Lecture 2. (MOOC) [Electronic resource] // Moscow School of Management SKOLKOVO. URL: https://online.skolkovo.ru (date of access: 15.04.2017).

19 On amendments to the Federal Law "On Education in the Russian Federation" in terms of improving the regulation of the application of professional standards in the field of vocational education: draft law No.1076089–7 (adopted in the first reading on 10.03.2021) [Electronic resource] // Official website of the State Duma of the Federal Assembly of the Russian Federation. URL: https://sozd.duma.gov.ru/bill/1076089–7 (date of access: 09.04.2021).

and Higher Education, when recruiting for higher education programs in 2021–2022, is allowed to hold a competition, among other things, in several professions and (or) areas of training within an enlarged group of professions or areas of training[20].

Thus, if the students join the university by competition within the enlarged group of professions in the second year they will have to choose a specific area of training. When the amendments to the law 'On Education in the Russian Federation' are adopted, each student will be entitled to an additional qualification, which is called minor educational track in foreign practice. Thus, the planned changes in the educational legislation will lead to the fact that the curriculum of each student will be initially individual and unique.

In this regard, we can say that it is actually planned to switch to the principles of organizing the education of the classical American baccalaureate. One of them is the controlled freedom of the student in choosing a discipline through the formats of a free curriculum, a core program and / or a free distribution. With a free curriculum, the student chooses an approved number of any courses within the organizational requirements. In the core program, the student goes through the entire range of disciplines according to a pre-approved plan, and only after that he has the opportunity to choose a specialization. Core disciplines should form a certain integrative model of professional competence, including clusters of universal knowledge, functional and behavioral (social) characteristics. This model was crystallized by the research and practice of scientists and educators in the USA, Great Britain and France[21]. The next option is a model of distributive requirements, when the organization of the educational process implies that the best way to introduce a student to a particular subject area of science is not to lecture a single course, but to allow the student to choose a topic that interests him and immerse himself in the subject area[22].

Thus, the student is given the right to determine the sphere of professional interests after entering the university. To do this, the student finds himself in a situation of ensuring the breadth of educational requirements. The breadth of requirements can be provided through core and / or distributive requirements: obligatory courses in which all students are required to familiarize themselves with important research methods or approaches to knowledge and / or classical humanitarian texts. There is also a variant of the broad education, when students are required to immerse themselves in a certain number of subject areas, but they choose specific disciplines themselves[23]. The author has come across options from five to twelve areas in the academic requirements of American universities.

The depth of study of the subject area assumes that the future graduate is immersed in a certain set of basic professional disciplines studied in a certain sequence with different levels of complexity (major). Additional qualifications (and a unique combination of competencies for the labor market) are provided by the choice of subjects from non-adjacent fields of knowledge (minor).

In the author's opinion, modern education based on the model of Liberal Arts and Sciences (LAS) is a relevant model of the higher education system that can overcome the challenges facing the world higher education in the 21st century. However, it should be understood that the LAS model is one model in a number of models[24], which is based on the fundamental principle of the organization of the educational process in higher educational institutions in America that is the individualization of the educational trajectory. The individual educational trajectory as a whole reflects a flexible approach to the student's formation of his training as the initial stage of the career management process. According to Natalia Shumkova, Deputy First Vice-Rector of the HSE, Director of the Center for Corporate Training at the HSE Graduate School of Business, career management is a basic tool for implementing the idea of lifelong learning. It is also applicable to the formation of a lawyer's professional identity at all stages of career management[25].

It is important to note that the LAS model is not just the architecture of an educational program. It exists only if the 'unity of the management system, the principles of building the curriculum and the pedagogical approaches used' is observed[26]. In general, it is 'a system of higher education designed to educate students with the desire and ability to learn, think critically and express their thoughts skillfully, as well as to educate citizens who are able to become active participants in a democratic society. Such a system is distinguished by a flexible curriculum that combines the width of the disciplinary scope with the

---

[20] On approval of the Procedure for admission to higher education educational programs — bachelor's degree programs, specialty programs, Master's programs: order of the Ministry of Science and Higher Education of the Russian Federation No.1076 of August 21, 2020 [Electronic resource] // <url> GARANT.RU portal URL: https://www.garant.ru/products/ipo/prime/doc/74441661/ (date of access: 09.04. 2021).

[21] See: Mitin, A. N. Architecture of Managerial and Legal Work Competencies. Yekaterinburg: USLUA. 2013. p. 46–52.

[22] See: Shcherbenok A. Ibid.[electronic resource]. URL: https://online.skolkovo.ru (date of access: 15.04.2017).

[23] Becker, J. What a Liberal Arts and Sciences Education is and is Not // Liberal Arts and Sciences at the Present Stage: the Experience of the United States and Europe in the Context of Russian Education. Saint Petersburg: SPbGU. 2014. P. 23.

[24] In the US Bachelor's degree there are general degrees and degrees indicating the subject area. The general bachelor's degrees include Bachelor of Arts (BA — in the field of humanities, social sciences and arts) and Bachelor of Science (BS — in the field of technical, mathematic and natural sciences). Bachelor's degrees with an indication of the subject area can be research (Bachelor of Science in Public Affairs, etc.) and professional (Bachelor of Engineering, Bachelor of Architecture, etc.).

[25] Section 'Problems of legal education in the new world'. International Conference 'Globalization and Law: problems of forming Global Legal Skills'. Faculty of Law of the Higher School of Economics. Moscow, March 25, 2021 00: 17: 54–00:51:20. [Electronic resource] URL:https://www.youtube.com/watch?v=PtdAEMd5sKI&list=PL7B5LIC4JjVdBmxA77JAQvzvGMgNsB24u&index= 2&t=2618s (date of access: 30.03.2021).

[26] Becker J. Ibid. p. 16.

depth of the subject study, encourages inter-disciplinarity and provides students with maximum freedom of choice. In addition, the model is distributed through student-oriented pedagogic, interactive and involving students in working with texts both in the classroom and outside it'[27].

Leo Botstein, President of Bard College, one of the leading American universities with a LAS program, says 'These days, the boundaries between scientific disciplines are blurring. This applies to Law, Medicine, and especially to Sciences — Chemistry, Biology, Physics, since advanced research areas, for example, in Biology imply a mandatory knowledge of Physics and Chemistry. Even if we proceed from the belief that it is necessary to study only what is really necessary for the student in his future professional activity, modern students need to expand their ideas about the knowledge they need from the very beginning. This model of education is the opposite of the system, which involves passing several obligatory stages established by previous generations and recognized as an official way of obtaining a professional status. Thus, if you want to become a more qualified lawyer, businessman, doctor, innovation specialist or engineer, education based on the Liberal arts and sciences model offers you the best way to develop creative and innovative abilities and to get more competitive professional training'[28].

As an example of the syncretism and inter-disciplinarity of a particular profession, he gives the profession of a lawyer. 'Any lawyer today should have knowledge in the field of natural sciences and biology, as well as computer and information literacy.

He will have to deal with cases related to patents and patient treatment, freedom of speech and dissemination of information, intellectual property and copyright. If he is completely ignorant of technology and science, he will be helpless when considering specific cases. If someone sues the company in connection with an illness caused by working conditions, and the lawyer does not even know where to start and how to understand the possible causes of this illness, he will be forced to rely on the opinion of an expert. The task of liberal education is, among other things, to provide students with basic scientific knowledge, even if they have chosen Humanities'[29].

However, for the LAS model, the situation of an increased role of specialization (major) in comparison with the breadth of education is unacceptable. But due to the complexity of the legal profession, the emphasis on professional disciplines is characteristic of legal education all over the world. And it is clear that it is impossible to use the LAS model directly when teaching lawyers. However, for example, American law schools and colleges have solved this problem brilliantly: they allow to get law degrees and start professional activity only for those who already have a bachelor's degree. That is, the American legal education wants to see its entrant with the formed qualities of a certain humanitarian and / or natural science training, analytics, critical thinking, functional competence of the level of academic text and writing, etc.

Considering the facts it is also not possible to use the LAS educational model in conjunction with Russian legal education. However, one of its central elements is teaching as pedagogy. Therefore, from our point of view, we can talk about the use of LAS educational technology in higher legal education. By educational technology, the author understands the model and the real process of implementing an integral pedagogical activity. Within the framework of this activity, the teacher is clearly aware of the target settings and orientations, the main ideas and principles, determines and understands the position of the student in the educational process, on the basis of which communication is carried out. He builds learning goals, which correlate with the content of the educational material, its didactic structure and forms of presentation. Accordingly, the conceptual and target bases dictate the specifics of methods and means of teaching, motivational characteristics, organizational forms of training, and determine the features of educational process management[30].

The conceptual basis of LAS educational technology is the creation of space and conditions for the formation of critical thinking and an active public civil position. The pedagogical goal can be recognized as improving the analytical abilities of students through a methodological model: when teachers introduce students to various points of view on the subject, with various theoretical approaches, they require students to read texts critically[31]. However critical thinking cannot arise from emptiness. In order to have something to operate within reasoned arguments, it is necessary to fill knowledge with specific facts, hypotheses, concepts. In this regard, the role of independent training of students is growing. Any interactive lesson is doomed to failure if students have not independently learned the materials for the class.

For the education of lawyers (bachelors and masters), LAS educational technology, from our point of view, is relevant when studying within the framework of fundamental disciplines — those that lay the foundation for professional legal thinking (introduction into the profession, theory of state and law, history of state and law, professional ethics of a lawyer, philosophy of law, history of political and legal doctrines, history of legal science, methodology of scientific research in the field of jurisprudence, comparative law, etc.). All pedagogical practices of the LAS model are based on the relationship of thinking and writing, and only a well-developed written speech allows for the procedures of critical and divergent thinking and is the basis for successful oral speech.

---

27 Ibid, p. 17.
28 Interview with the President of Bard College Leon Botstein// Voprosy obrazovaniya. 2015. No.4.p. 12.
29 Ibid. p.15.
30 Gorovaya V.I., Petrova N.F. Educational technologies and technological culture of a modern teacher// Modern high-tech technologies. 2008. No.10. pp. 35–36.
31 Becker J. Ibid. p. 24.

Fareed Zakaria, an American political analyst, editor of Newsweek International magazine, was proud of his interaction with the LAS system as a student. 'Its main value is that it teaches you to express your thoughts in writing... a liberal education teaches you to think, and thinking and writing are inextricably linked.' 'Another significant advantage ... consists in the fact that it teaches you to speak and express your thoughts.' 'And finally, ... it teaches you to learn — to read on a variety of subjects, to find and analyze information'[32]. At first glance, these are expected goals of studying at any higher educational institution. However, special techniques are required for the purposeful formation of such abilities. The methodological center that develops such methods is Bard College.

It ranks first in the American national educational rating of colleges that implement the most advanced educational standards of study in the field of Liberal Arts and Sciences. In the overall rating of the leading US colleges in the field of Liberal Arts and Sciences Bard College was ranked 62nd (out of 400 in the first division) in 2020[33].

The key principle of LAS educational technology is as follows: writing is a unique way of learning, it is able to define and convey and, indeed, defines and transmits experience. Language provides a unique way of cognition and becomes a tool for revealing meanings, transmitting thoughts and comprehension both in the audience and outside it. Through the educational practices of Bard College, a stable connection between thought and its expression is formed. Reading, writing and creative tasks make students understand what critical thinking is, and instill in them the culture of thinking necessary for intellectual growth and a successful career[34].

A study by the Carnegie Fund in collaboration with Vanderbilt University showed that writing contributes to a better understanding of what is read, because 'students learn to link what they read, what they know and what they think'. The tasks 'write to read' feed the sense of self-identity, strengthen vitality and involvement', because they help students to realize allusions, motivations and associations in their own texts. The US National Commission on writing points out: 'If students are faced with the task of extracting knowledge, they must struggle with facts, overcome details, process raw material and translate obscure concepts into a language in which they can convey them to someone else. In a word, if students want to study, they must write'[35].

The communicative goal of classes within the framework of LAS educational technology is to create such an educational space that allows to form 'a certain model of mental behavior, a certain mindset that students need in order not to stop learning throughout their lives, to be able to think critically, to think interdisciplinary. In addition, such a seminar is a kind of laboratory where students work with each other, really learn to read a text, no matter the topic, and then not just retell or pointlessly repeat this text, but ask questions to it and raise new questions based on the text they read. This is critical thinking'[36].

Within the framework of fundamental legal courses, many methods developed at Bard College can be used. In the arsenal of the author of the article there are about twenty of them[37]They assume the transformation of the thought at first exclusively into a written text, and only after a written presentation a collective discussion of the results is possible. But students can voice their ideas and judgments (at the time of their publication) only according to the written text. It should be noted that any object of research can be used for 'reading' instead of the text (video series [film, cartoon], artifact-object, image, etc.)

The advantage of the entire set of methods (as an educational LAS technology) is that you can create your own derived methods based on them, observing the fundamental principles:

- reproduction of the connection between thinking and writing;
- equality of all participants in the class, the value of the right to speak;
- intellectual collaboration of students;
- algorithmization of the thought process (that is, step-by-step implementation of exercises);
- the teacher acts as a facilitator through questions and reflection.

The following methods can be used as classical in legal disciplines. Actually, free writing for 5–10 minutes allows you to tune the thinking, clearing it of focus, and transfer it to a working state for solving analytical problems. It is good to use it at the beginning of any classes where there is written work (not at the exam).

Writing to Read allows you to get into the text, recording the results of analytical reading in writing. In fact, the method allows you to enter into a dialogue with the author of the text, while maintaining the freedom of your thinking. Students realize that they are in a dialogue with the text when, as part of a joint group work, there is a discussion of the author's thesis, which, according to each teacher, is the main one. And it turns out that there are a great many 'basic theses'. And it is very easy to get out of this position into the situation of 'appropriating' the text, giving it its own meaning, and then searching for identity with other colleagues-students during the discussion.

---

[32] Zakaria, F. Why Are the Liberal Arts So Important // Liberal Arts and Sciences at the Present Stage: the Experience of the United States and Europe in the Context of Russian Education. Saint Petersburg: SPbGU. 2014. P. 110–111.

[33] U.S. News & World Report L. P. [Electronic resource]. URL: https://www.usnews.com/best-colleges/bard-college-2671/overall rankings (date of access: 20.06.2020).

[34] See: Peoples P. The development of speech and critical thinking among students in the programs of Bard College// Questions of Education. 2015. No.4. pp. 117–118.

[35] Peoples P. Ibid. p. 127.

[36] Interview with the Rector of the University of Richmond Ronald Krucher// Voprosy obrazovaniya. 2015. No.4.p. 29.

[37] Teaching methods of Liberal Arts and Sciences took place at the Faculty of Liberal Arts and Sciences of St. Petersburg State University, tutor E. Galazanova.

Believing and Doubting helps the student to realize that a problem or a thesis can be ambiguous and multi-layered, that argumentation is not just" my opinion",

but a complex, formalized, often logically ordered chain of reasoning that necessarily expresses an unobvious judgment about the world[38]. And the use of the devil's advocate method often breaks the students ' idea of their value judgment as the only correct one.

Dialectical Response Notebooks provide dialogical interaction of two or three people. They can work and exchange thoughts about the individual meanings found in the text in an interactive mode.

Free Narrative Writing works great. This method was applied to the normative legal act of the branch of criminal law, and students described their state as criminal law institution. There is a setting in the position of 'the other', the use of knowledge of criminal law to create an adequate 'I-story', the use of different styles of the Russian language for the story.

It is very interesting to use the technique of writing from images. This method is applied by the author in two classes (in relation to a normative legal act and a film that captures, among other things, the legal reality). It can also be used in the study of texts within the framework of the philosophy of law, the history of political and legal doctrines, etc., in any legal disciplines where the objects are concepts and ideas. Personal attitude to the text, its assignment by students occurs through a number of images evoked by the text. With the help of a teacher-facilitator, through questions, the student builds a chain of images in accordance with a certain logic. In the course of the work, students talk about their 'written' thoughts. At the end of the exercise stage, the obtained elements can be arranged in a different sequence (cut and re-glue the paper), then again conduct a revision of the text on the teacher's questions. Also, if there is time, students can exchange newborn texts with each other, get feedback and improve the text once again. In fact, the final product will be an original essay on the topic under study, which has not been compiled or borrowed from the Internet and is an absolutely original work. Some students are very surprised that they were able to create a text without the help of surfing the net.

A serious disadvantage when using such methods, which involve checking a large number of student papers and writing detailed reviews on them, is an increase in the rate of exploitation of teaching work[39]. Verification of the written results of independent work can be effective only if it has a certain methodological basis developed by the teacher independently. In the working programs of disciplines, as a rule, the forms of verification as types of work are written down, their total labor intensity is often calculated. However, in reality, this type of work activity of the teacher is practically not paid and is carried out at the expense of either current, and most often pre-examination consultations, or personal time of the teacher, which reduces its quality[40]. It is legally defined that the educational activity of an organization implies the format of independent work[41]**,** however, the verification of written works as the results of independent work of students (IW in the curricula) is not defined as a type of labor activity ('contact work', 'academic load)[42], which allows organizations to ignore it or arbitrarily determine the standards of labor costs in certain areas of training / specialties (providing for drawing and graphic work). In fact, this type of work is translated into an individual work of teachers, which creates problems taking into account his real labor costs[43].

In the context of the pandemic, within the framework of online training, the author applied LAS techniques in combination with competence certifications in the format of a written creative essay on problematic topics and a 'blind review' (peer-to-peer). This made it possible to test the students skills and abilities to read functionally and competently, select adequate sources, identify and present arguments, build a system of judgments for analysis with the formulation of reasonable conclusions, make reasonable assessments, interpretations, and also removed the problem of cheating or plagiarism, since the creation of original essays made surfing the Internet meaningless and similar techniques were immediately noticeable in the texts. However, this personal experience has revealed the following: a huge amount of time is needed to check the results of students and provide adequate academic feedback. 746 texts of student papers (essays and reviews) were checked for 2.5 months. And traditionally, this activity is not formally recorded in the pedagogic work of the teacher in any way.

---

[38] Blusiewicz, T. Russian Students through the Eyes of Foreign Professors [Electronic resource] // The School of Advanced Studies (SAS). The University of Tyumen. URL: https:// sas.utmn.ru/ru/russian-students/?fbclid=iwar2tdtgaxaqmme3ortfmdaiona45tn6srfafyvh2u9sbyc_qywbarrkmopa

[39] See: Ivanova, Y., Sokolov, P. Prospects for Liberal Arts Education Development in Russian Universities. Overview of Proceedings of the Liberal Education in Russia and the World Conference // Educational Studies. 2015. No.4. pp. 87–88.

[40] Bessolitsin, A. A., Monakhov, V. A. Ensuring the Quality of Education in Higher Education Institutions — the Search for New Approaches // Questions of the New Economy. 2013. No.3 (27). P.78.

[41] On approval of the Procedure for Organizing and Implementing Educational Activities for educational programs of higher education — bachelor's degree programs, specialty programs, Master's degree programs: Order of the Ministry of Education and Science of the Russian Federation No.301 of April 5, 2017 (with amendments and additions). Appendix. The order of organization and implementation of educational activities for educational programs of higher education — bachelor's degree programs, specialty programs, master's degree programs [Electronic resource] // <url> GARANT.RU portal. URL: https://base.garant.ru/71721568/53f89 421bbdaf741eb2d1ecc4ddb4c33/ (date of access: 09.04.2021).

[42] On the duration of working hours (norms of hours of pedagogical work for the salary rate) of pedagogical workers and on the procedure for determining the educational load of pedagogical workers stipulated in the employment contract: order of the Ministry of Education and Science of the Russian Federation of December 22, 2014 N 1601 (with amendments and additions). Appendix No.1. Duration of working hours (norms of hours of pedagogical work for the salary rate) of pedagogical workers [Electronic resource]// <url> GARANT.RU Portal URL: https://base.garant.ru/70878632/53f89421bbdaf741eb2d1ecc4ddb4c33/ (date of access: 09.04.2021).

[43] Kabanov, V. N. Labor Rationing in Higher Educational Institutions // Economics of Education. 2013. No.2. p. 46.

Thus, the use of educational technologies of the Liberal Arts and Sciences model in legal education allows us to fulfill the tasks of teaching functional literacy, creating stable relationships between thinking and written speech, instilling a culture of thinking, forming critical thinking, gaining successful experience of intellectual collaboration, the ability to discuss and tolerate someone else's picture of the world. This meets the current challenges of the labor market of the new digital world. However, possible innovations in the use of LAS educational technology come into conflict with the current organization of teachers' labor in Russian universities.

References

1. Becker, J. What a Liberal Arts and Sciences Education is and is Not // Liberal Arts and Sciences at the Present Stage: the Experience of the United States and Europe in the Context of Russian Education [Svobodnye iskusstva i nauki na sovremennom etape: opyt SSHA i Evropy v kontekste rossijskogo obrazovaniya]. Saint Petersburg : SPbGU. 2014. P. 12–40. (in rus)
2. Bessolitsin, A. A., Monakhov, V. A. Ensuring the Quality of Education in Higher Education Institutions — the Search for New Approaches // Questions of the New Economy [Voprosy novoj ekonomiki]. 2013. No.3 (27). P. 73–80. (in rus)
3. Blusiewicz, T. Russian Students through the Eyes of Foreign Professors [Electronic resource] [Rossijskie studenty glazami inostrannyh professorov] // The School of Advanced Studies (SAS). The University of Tyumen. URL: https://sas.utmn.ru/ru/russian-students/?fbclid=iwar2tdtgaxaqmme3ortfmdaiona45tn6srfafyvh2u9sbyc_qywbarrkmopa (accessed: 16.05.2020). (in rus)
4. Dorofeeva, M. A. Strategies of Independent Work of First-Year Students of the FEFU Law School As a Manifestation of the Characteristics of Generation Z // IV Pacific Legal Forum, dedicated to the celebration of the 60th anniversary of continuous legal education at the Far Eastern Federal University and the 99th anniversary of legal education in the Far East of Russia. October 2–4, 2018 [IV Tihookeanskij yuridicheskij forum, posvyashchennyj prazdnovaniyu 60–letiya nepreryvnogo yuridicheskogo obrazovaniya v Dal'nevostochnom federal'nom universitete i 99–letiyu yuridicheskogo obrazovaniya na Dal'nem Vostoke Rossii. 2–4 oktyabrya 2018 goda]. Vladivostok : Far Eastern Federal University. 2018. P. 77–82. (in rus)
5. Gavrilyuk, V. V., Sorokin, G. G., Farakhutdinov, Sh. F. Functional Illiteracy in the Context of the Transition to the Information Society [Funkcional'naya negramotnost' v usloviyah perekhoda k informacionnomu obshchestvu]. Tyumen' : TyumGU. 2009. 244 p. (in rus)
6. Interview with the President of Bard College Leon Botstein // Educational Studies. 2015. No.4. P. 11–20. (in rus)
7. Interview with the Rector of the University of Richmond Ronald Krucher // Educational Studies. 2015. No.4. P. 21–32. (in rus)
8. Ivanova, Y., Sokolov, P. Prospects for Liberal Arts Education Development in Russian Universities. Overview of Proceedings of the Liberal Education in Russia and the World Conference // Educational Studies. 2015. No.4. P. 7291. DOI: 10.17323/1814–9545–2015–4–72–91. (in rus)
9. Kabanov, V. N. Labor Rationing in Higher Educational Institutions // Economics of Education [Ekonomika obrazovaniya]. 2013. No.2. P. 42–48. (in rus)
10. Mitin, A. N. Architecture of Managerial and Legal Work Competencies [Arhitektura kompetencij upravlencheskogo i yuridicheskogo truda]. Yekaterinburg : USLUA. 2013. 166 p. (in rus)
11. Peoples, P. Empowering Students through Language & Critical Thinking: the Bard College Language & Thinking Program [Razvitie rechi i kriticheskogo myshleniya u studentov v programmah Bard-kolledzha] // Educational Studies. 2015. No.4. P. 116–131. (in rus)
12. Shcherbenok, A. University Management [Upravlenie universitetami]: MOOC [Electronic resource] // Moscow School of Management SKOLKOVO. URL: https://online.skolkovo.ru (accessed: 15.04.2017). (in rus)
13. Usheva, M. N. Talent Management in Modern Human Resource Management [Electronic resource] // Marketing and Management Innovation [Marketing i menedzhment innovacij]. 2011. No.3. Vol. 2. P. 176–177. URL: http://mmi.fem.sumdu.edu.ua/sites/default/files/mmi2011_3_2_173_179.pdf (accessed: 21.09.2109). (in rus)
14. Zakaria, F. Why Are the Liberal Arts So Important // Liberal Arts and Sciences at the Present Stage: the Experience of the United States and Europe in the Context of Russian Education [Svobodnye iskusstva i nauki na sovremennom etape: opyt SSHA i Evropy v kontekste rossijskogo obrazovaniya]. Saint Petersburg : SPbGU. 2014. P. 110–111. (in rus)
15. Facione, Peter A. Critical Thinking: A Statement of Expert Consensus for Purposes of Educational Assessment and Instruction. Executive Summary // The Delphi Report. The Complete American Philosophical Association Delphi Research Report [Electronic resource]. Queensborough Community College. N-Y. 1990. URL: http://www.qcc.cuny.edu/SocialSciences/ppecorino/CT-Expert-Report.pdf (accessed: 25.01.2019).
16. Schwab, Klaus. The Fourth Industrial Revolution. What It Means and How to Respond [Electronic resource] / Foreign Affairs: Multiplatform Media Organization. December 12, 2015. URL: https://www.foreignaffairs.com/about-foreign-affairs (accessed: 02.09.2019).
17. World Economic Forum. Insight Report "The Future of Jobs. Report 2018" [Electronic resource]. P. IX. URL: http://www3.weforum.org/docs/WEF_Future_of_Jobs_2018.pdf (accessed: 21.09.2019).

International Anti-Corruption Standards and Russian Criminal Code

Oksana I. Lepeshkina
PhD in Jurisprudence, Associate Professor, the North-West Management Institute of the Russian Presidential Academy of National Economy and Public Administration, Saint Petersburg, Russian Federation;
lepeshkina-oi@ranepa.ru ORCID 0000–0002–8817–5838

Abstract
This article describes history and contemporary status anti-corruption standards in the international community of states, universal and regional. There is analysis about execution of Russian Federation it's international obligations on against corruption in this article. Considerable changes in Criminal Code about responsibility for corruption crimes are made after ratification Criminal Law Convention on Corruption. Russia is successfully executed three evaluation rounds of GRECO on anti-corruption legislation. The aggravating circumstances of petty bribery are made by author in the article. Moreover, it is necessary to eliminate the error in article 291.2 regarding imposition of punishment in the form of correctional labour, made when imposing sanctions for petty bribery.
Keywords: anti-corruption standards, GRECO, corruption, corruption crimes, official bribery, bribetaking, petty bribery

In 2003 UNO General Assembly established the International Anti-Corruption day — the 9th of December.

Since 1995 the international non-governmental anti-corruption organization Transparency International наы provided data about the index of perception of corruption in the world. Since 2012 the index of perception of corruption has been determined on a 100–points scale, where 0 is the highest index of perception of corruption, and 100 is the lowest index of perception of corruption, what let us consider the states as the most corrupted and the least corrupted.

According to this organization's data, Denmark, New Zealand, Finland, Singapore, Sweden, Swiss belong to the less corrupted countries. In 2020 Denmark and New Zealand were on the top (88 points).

According to mentioned index, Russia still belongs to the most corrupted countries. Since almost 20years-long rating period with the new calculation system, the index of perception of corruption in Russia is almost at the same level with a little improvement of situation in certain years:

in 2012 — 28 points, in 2013 — 28 points, in 2014 — 27 points, in 2015 — 29 points, in 2016 — 29 points, in 2017 — 29 points, in 2018 — 28 points, in 2019 — 28 points. In 2020 Russia took 30 points анв so was on the 129th place among 180 States[44].

The international community of states paid attention to the necessity of elaboration of anti-corruption international legal framework at the beginning of the 1990's only.

One of the first who took certain action in this direction was the UNO.So, in 1990 at the 8th UN Congress on preventing crime and handling with offender was accepted the 7th Resolution "Corruption in sector of state administration" (A/CONF.144/28/Rev.1)[45]. The resolution 51/59 of the UN General Assembly from December 12th 1996 set the advisory International Code of state officials' behavior. Also with the resolution 51/59 of the UN General Assembly from December the 16th 1996 accepted the UN Declaration of anti-corruption and bribery in international commercial organizations.

Further, the appropriate international agreements were devoted to anti-corruption issues: The UN Convention against Transnational Organized Crime from November 15th 2000, The UN Convention against Corruption from October 31th 2003.

But the earlier anti-corruption conventions were accepted in a lot of local international organizations. The first one is — within the Organization of American states — the Inter-American Convention against Corruption from March 29th, 1996. On 26 May 1997 the Council of EU accepted the Convention against Corruption, involved officials of European communities and officials of EU members states. The Organization for Economic Co-operation and Development accepted on November 21th 1997 the Convention on Combating Bribery of Foreign Officials at international deals.

The legal basis for anti-corruption in the Council of Europe is composed from: the Resolution of Committee of Ministers of the Council of Europe №97 (24) from November 6th 1997 "about the twenty guiding principles against corruption", the

[44] Transparency International — Russia [online source] //official website. URL: https://transparency.org.ru/research/ indeks-vosptiyatiya-korruptsii/(data of access: 08.03.2021).

[45] See Shorokhov, V. E. The Anti-Corruption Policy of the UN and Russia: a Comparative Law Aspect // International Public and Civil Law. 2019. No.6. // Consultant Plus. URL: http://demo.consultant.ru/cgi/online.cgi?req=doc&ts=393896190097906268938152 8&cacheid=D868B173E (data of access 10.12.2020).

Convention of criminal liability for corruption from January 27th 1999, and the Convention for civil liability for corruption from November 4th 199, as well as the Recommendation of the Committee of Ministers of the Council of Europe №R (2000)10 from May 11th 2000 for states-members about the Code of state officials' behavior and the Recommendation of the Committee of Ministers of the Council of Europe №REC (2003)4 from April 8th 2003 "About common rules of anti-corruption by financing of political parties and electoral campaigns".

The Resolution of the Committee of Ministers of the Council of Europe №97 (24) from November 6th 1997 is fundamental in the anti-corruption actions of the Council of Europe. Twenty principles of anti-corruption are formulated in this Resolution, inter alia: "1) to take effective measures for preventing of corruption and in this regard to develop the public conscience and to contribute to promotion of ethical behavior. 2. To ensure the coordinated actions for criminalization of domestic and international corruption... 4. To ensure appropriate measures for confiscation and deprivation of income in case of corruption. 5. To ensure appropriate measures for preventing use of legal entities for covering corruption acts..."[46].

In member states of Commonwealth of Independent States there are a lot of laws: "About Anti-Corruption" from April 3th 1999, "Basics of Law-making about anti-corruption politics" from November 15th 2003, "About Anti-corruption (new edition)" from November 25th 2008.

It must be mentioned, that anti-corruption principles belong to international legal acts, which regulate actions against other crimes, bound with corruption: organized crime, legalization of criminal income. So, the UN Convention against Transnational Organized Crime provides the criminalization of corruption and the measures against it.

A.A. Kashirkina and O.I. Tiunov point out: "The positive accumulation of international legal base of anti-corruption lead to a special anti-corruptional set of tools, which includes international international anti-corruption principles and standards"[47]. To special principles belong the following, according to the authors: "the effective principle of prevention and eradication of corruption based on norms both national and international law, the principle of criminal liability for corruption for individuals and legal entities"; to standards belong, for instance, the concept of an executive — "efficiency, proportionality of a criminal penalty for official bribery " etc[48].

According to the Federal Law from December 25th 2008 №273 "About anti-corruption" the common norms and principles and international treaties of the Russian Federation also belong to legal bases of anti-corruption (Art.2)[49].

In Russian Criminal Code 1996 the responsibility for a crime is set first of all in Chapter 30 (public crimes and crimes, committed by executives) and in Chapter 23 (non-public, committed by persons leading commercial organizations).

According to the decree of the Prosecutor General's office of the Russian Federation №35/11 and Interior Ministry of the Russian Federation №1 from January the 24th 2020 "About bringing into force the list of articles of Russian Criminal Code, used by forming of statistic reports", the following signs belong to corruption crimes: existence of proper subjects, connection of the crime with official position of the subject, the selfish motive of the subject, direct intention. Of course, the following articles consider corruption crime: Articles 141.1, 184, Paragraph "b" Part 3 Article 188, Articles 200.5, 201.1, 204, 204.1, 204.2, Paragraph "a" Part 2 Article 226.1, Paragraph "b" Part 2 Article 229.1, Articles 289, 290, 291, 291.1, 291.2 (List 23)[50].

Significant changes occurring in crime legislation about liability for corruption during 2000th were mainly conditioned by necessity of the Russian Federation to fulfill the international legal obligations, first of all after ratification of the Convention about criminal liability for corruption from January 27th 1999[51].

The authority, supervising the fulfillment of provisions the group of states against corruption, was established on the 1th of May, 1999 — GREKO. Russia has been a state-member of GREKO since February 1st 2007, the date of coming into force for Russia, because every state becomes automatically a member of this organization after ratification (Part 4 Article 32 of Convention). Russia also signed the Additional Protocol from May 15th 2003 about criminalization of corruption actions according arbitration judges[52].

Russia passed successfully three rounds of grading in GREKO according implementation of the principles of Convention about criminal liability for corruption[53]. The first round (2000–2002) was devoted to an analysis of national bodies' activity against corruption. The second round (2003–2006) was devoted to issues of anti-corruption in public administration and

---

46 Resolution of the Committee of Ministers of the Council of Europe №97 (24) from November 6th 1997 [online source] URL:http:www.supcourt.ru/files/15934/ (data of access: 10/12/2020).

47 Corruption: Nature, Types, Counteraction: monograph / Editor-in Chief T. Y. Khabrieva. Moscow: Jurisprudence. 2014. Page 87.

48 Corruption: Nature, Types, Counteraction: monograph / Editor-in Chief T. Y. Khabrieva. Moscow: Jurisprudence. 2014. Pages 88–89.

49 About anti-corruption: the Federal Law from December 25th 2008 №273 (ed. From 31.07.2006 № 259) [online source] //Consultant plus URL:http://www.consultant.ru/document/doc_LAW/82959/ (data of access: 20.12.2020).

50 About bringing into force the articles of Russian Criminal Code used by forming of statistic reports: the decree of the RF Prosecutor's General Office №35/11 and of the RF Ministry of Internal Affairs №1 from January 24th2020 [online source] // Consultant plus URL:http://www.consultant.ru/document/doc_LAW/10699/ (data of access: 20.03.2021).

51 About ratification of criminal liability for corruption: the federal Law from 25.07.2006 №125ю2006. №31 Part 1 Art.3424.

52 About signing the additional treaty to the Convention about criminal liability for corruption: decree of the RF President from 16.03.2009 №158// 2009. №12. Art.1419.

53 Official website of GREKO — Group of States against Corruption) [online source] URL: https://www.coe.int/greko (data of access: 20.12.2020).

local governments and confiscation of properties, as well criminal liability of judicial entities. The third round (has being begun on January 1st 2007) is devoted to two issues: "Criminalization of actions" and "Transparency of financing of political parties".

Within the first and the second rounds GREKO according Russia the following was recommended: 1) to expand the scroll of corruption actions mentioned in article 104.1 Criminal Code with further criminal liability, and add to them the others, for example articles 291, 201: 2) to forbid for executives and state officials to take gifts in exception of gifts presented in accordance with events' protocols, which is admitted by Article 575 Russian Civil Code; 3)to establish criminal liability of executives for corruption crime (recommendations XIV, XXI, XXIV).

To "Criminalization of actions" of the third round of evaluation of Russia, according to Governing Principle 2 (criminal liability for corruption), GREKO gave nine recommendations: i) to criminalize bribery of all members of international parliamentary meetings, as well as judges and executives of international courts; ii) to criminalize bribery of international and national arbitration judges and to accept the additional treaty to the Convention about criminal liability for corruption; iii) to mention in Articles about active bribery (bribe taking) such signs as offer, promise and ask about giving advantage and accepting an offer or a promise; iv) to include in the corruption crime subject the advantages of non-property character; v) to criminalize the cases when the bribe is given to third parties, as entities as individuals; vi) to provide in Article 204 Russian Criminal Code the clauses about giving the object of commercial bribe to the third parties, giving non-property advantage, expanding the circle of subjects of crime and considering as subject of a crime any worker of the organization, and also to exclude from notes to Article 204 the clause about the following: if the damage was caused to interests of this organization only, the criminal prosecution is implemented only on the application of the organization or its agreement; vii) to criminalize misuse of power; viii) to enlarge statute of limitations according to the article 291 and 184 Russian Criminal Code; ix) to analyze clauses of Russian Criminal Code about special defence in case of active repentance, what is provided in the notes to articles 204, 291 and 291.1 Russian Criminal Code.

The Institute of criminal liability of executives in Russia was been provided neither in pre-revolutionary criminal law, nor in the soviet period. N.S. Tagantsev pointed explicitly, that liability of executives "seems to be very controversial", and made two arguments, "taken either from the construction of a legal entity, or from basis of criminal penalty". According to him, the legal entities is the product of judicial fiction, and the criminal liability is caused by the guilt of the person, what doesn't exist in a legal entity acted through its representatives[54].

A Russian law maker introduced administrative responsibility for legal entities for corruption crimes. The Federal law from December 25th 2008 №280 "About making changes in certain legal acts of the Russian Federation in connection with ratification of the UN Convention against Corruption from December 31th 2003 and the Convention of Criminal Liability for Corruption from January 27th 1999 and with accepting the Federal Law "About anti-corruption"" into Administrative Code of the Russian Federation 2001 entered an Article 19.28 "Illegal Award from an legal entity". According to "Review of judicial practice of considering cases about bringing to administrative responsibility, provided by the Article 19.28 Russian Administrative Code" (accepted by the Presidium of Supreme Court of the Russian Federation on July 8th 2020), the judges of general jurisdiction considered on the Article 19.29 Russian Administrative Code: in 2017 — 603 cases on Part 1, 57 cases on Part 2 and 14 cases on Part 3; in 2018 — 607 cases on Part1, 74 cases on Part 2 and 8 cases on Part 3; in 2019 — 431 cases on Part 1, 46 cases on Part 2 and 8 cases on Part 3[55].

According the GREKO's recommendations about criminalization of an offer, promise and ask about an advantage and considering the offer or promise as a crime, according to the Russian Supreme Court Plenum's Resolution from July 9th 2013 №24 (ed. 24.12.2019 №59) "About judicial practice in cases of bribery and other corruption crimes", "an promise or an offer to give or to take an illegal remuneration for some actions or inaction have to be determined as intentional circumstances for committing relevant corruption crimes" (Paragraph 13.1), i. e. a preparation to a crime.

The following changes in criminal law are related to determination of corruption crimes' principles. The Federal Law №97[56] from May 4th 2011 in the Article 290 "Bribe taking" the list of subjects of crime has been expanded — it includes an foreign official and an official of an international public organization. The same law enters the Article №291.1 "Mediation in bribery", and in its 5th Article an offer and a promise of mediation in bribery has been criminalized. It has be mentioned, that earlier in 1960 USSR Criminal Code provided liability for mediation in bribery (Article 174.1).

The Federal Law №302[57] from November 2th excluded Paragraphs 2 and 3 from notes to the Article 201 "Misuse of power", according to which in case of causing damage to an commercial organization criminal prosecution is implemented on an application of this organization and from its agreement only.

Significant changes in Russian Criminal Code for corruption crime were made by the Federal law №324[58] from July3th, aimed at reinforcement of anti-corruption. According to this law in Article 290 bribe taking includes such cases, when the

---

54 Tagantsev N.S. Russian Criminal Law. V.1. Tula: Avtograf, 2001. Pp. 309–310.

55 Official website of the RF Supreme Court [online source] URL: http://www.vsrf.ru/documents/thematics/29109 (data of access: 20.12.2020).

56 On changes into Russian Criminal Code and Russian Administrative Code in relation to improvement of state administration in anti-corruption sector: the Federal Law№ 97 from 04.05.2011// 2011/ №19. Article 2714.

57 On changes in certain legal acts of the Russian Federation: the Federal Law№ 302 from 02.11.2013// 2013/ №44. Article 5641.

58 On changes in Russian Criminal Code and Criminal Procedure Code: the Federal Law№ 324 from 03.07.2016// 2016/ №27. Part 2 Article 4257.

bribe is given under the instruction of an official to other legal entities or an individual". The appropriate clauses were provided in Articles 184 and 204 Russian Criminal Code. The Code is also supplemented by the Article 204.1 "mediation in bribery" and Article 204.2 "petty commercial bribe" and 291.2 "petty bribery".

The changes have to be added to the composition if a crime of petty bribery (Article 291.2 of Russian Criminal Code), to the part of determination of additional ranging features. Asserted by the President's decree from June 29th 2018 № 378, the national anti-corruption plan for 2018–2020 charged to the Prosecutor General's office, the Supreme Court of RF, the Ministry of Justice of RF, the Federal Security Service of RF ant the Investigative Committee of RF to prepare such proposals (clause 39).

The Article 291.2 Russian Criminal Code contains a special norm according to Article 290 and 291 Russian Criminal Code and is being implemented also in presence of certain signs, the list of these signs can be provided in the Article 291.2 Russian Criminal Code, in consideration with less strict sanctions.

Moreover, it is necessary to eliminate the error in Article 291.2 regarding imposition of punishment in the form of correctional labor made when imposing sanctions for petty bribery. So, the alternative section of Part 2 Article 291.2. provides the punishment "correctional labor with the term to three years". But the mentioned term contradicts with the fixed in part 2 Article 50 "Correctional labor" Russian Criminal Code maximal limit of this punishment, in which accordance this term have to be from two month to two years".

References

1. Corruption: Nature, Types, Counteraction : monograph [Korruptsiya: priroda, proyavleniya, protivodeistvie : monografiya] / Editor-in Chief T. Y. Khabrieva. Moscow : Jurisprudence [Yurisprudentsiya]. 2014. 672 p. (in rus)
2. *Tagantsev, N. S.* Russian Criminal Law. Volume 1 [Russkoe ugolovnoe pravo. T. 1]. Tula : Avtograf [Avtograf]. 2001. P. 309–310. (in rus)
3. *Shorokhov, V. E.* The Anti-Corruption Policy of the UN and Russia: a Comparative Law Aspect [Antikorruptsionnaya politika OON i Rossii: sravnitel'no-pravovoi aspekt] // International Public and Civil Law [Mezhdunarodnoe publichnoe i chastnoe pravo]. 2019. No.6. P. 36–39. (in rus)

Digital Building Permit As a Complex Permitting Document

Victor A. Mayboroda
Associate Professor of Civil and Labour Law the North-West Management Institute of the Russian Presidential Academy of National Economy and Public Administration, Saint Petersburg, Russian Federation, Judge of the Tula Regional Court in Resignation, PhD in Jurisprudence; mayboroda-va@ranepa.ru
ORCID 0000–0002–3439–1244

ABSTRACT
The article puts forward a proposal for the formation of a digital building permit as a complex permitting document, the formation and issuance of which will include compliance with the requirements for landscaping both at the start of construction and at its completion. The digitalization of urban planning regulation, on the one hand, and the digitalization of the construction area of regulation should be harmonized through the improvement of the structure of the urban planning plan of the land plot, the implementation of which for the location of the capital construction facility will include the implementation of measures for landscape reconstruction of the development area. A comprehensive permitting document in the sense under discussion covers the stages of capital construction immediately preceding capital construction and the stages of subsequent landscape transformation of the territory, which compensates for the anthropogenic load of the erected object. The totality of each of the load values in the further development of the considered regulation, combined into a single data set (big date), will make it possible to resolve the issue of the load of the entire settlement as a whole with all possible certainty, without using calculation methods, whose estimates are of a probabilistic nature.
Keywords: integrated building permit, architectural and landscape reconstruction, digitalization of urban planning activities, digitalization of construction

Article 747 of the Civil Code of the Russian Federation formulates several additional obligations of a customer in a construction contract, which appear solely due to special characteristics the subject-matter of this contract. Among other things the customer shall ensure transportation of goods to the address of the facility under construction, connection of temporary power supply networks, water and steam pipelines; and provide other services. When talking about provision of other services, we should consider Part 4 Article 52 of the Urban Planning Code of the Russian Federation, which states: when construction, reconstruction, overhaul of a real estate is performed under a construction contract with a developer (technical customer, other person), the latter shall prepare a land for construction and (or) a real estate facility for reconstruction, or overhaul, and deliver materials and results of engineering surveys, project documentation, and a building permit to the other party of the contract, be it a sole proprietor or a corporate legal person.

The above-quoted regulation makes it clear that it is the customer's responsibility to prepare the land and ensure that its condition shall meet legal requirements on suitability, and obtain a building permit. A building permit in modern regulatory environment and the law enforcement practice serves as a bifurcation point, a kind of milestone, which means shifting from one stage of a construction project to another. The stage preceding the building permit relates not as much to contractual legal relations, as to solution of both technical and financial issues. Moreover, at this stage, financing issues prevail over technical regulation, since the project, as a rule, is financed by a bank that has its own established set of requirements, which rarely can be smoothly solved by the customer of a capital construction.

It should be mentioned that landscape culture regulations are not covered either by the civil law that establishes legal principles for valuable consideration under the contractual obligation, or by the construction codes (at the federal level — the Urban Planning Code of Russia and the corresponding regional acts),that list principles of public regulation of licensing and permit issuing in the capital construction treated as a technological area with an increased hazard for participants in the construction processes, due to which operations can only be performed under ultimate extent of regulations. Landscape culture environment is deemed as characteristics of real estate under capital construction, which are aimed not only at satisfying its functions in the real estate or territorial development, but also at meeting environmental requirements of society and aesthetic needs of the community residents where the real estate is being constructed.

Certain regions or communities are taking steps to control the described relations as early as at the stage of visualization of the capital construction facility to be erected in the general architectural concept of the area. For, St. Petersburg has a regional Law of St. Petersburg No.692–147 dated December 2, 2015 "On procedure for approval of architectural and urban planning appearance of a housing construction facility and non-residential capital construction projects"; its normative regulation involves the facility appearance approval to be issued by the authorized executive body (for types of facilities as

prescribed by regulations). By virtue of legal regulations, no approval of the architectural and urban planning appearance of the facility shall prevent issue of a building permit; however, formally this provision has not been documented.

Requirement to get approval of the architectural and urban planning appearance relies upon clause 130 of the exhaustive list of procedures in housing construction, attached to the Decree No.403 of the Government of the Russian Federation dated April 30, 2014, therefore, approval can be obtained through a judicial review procedure, covering not only residential housing, but also other capital construction facilities (Resolution of the Judicial Board for Administrative Cases of the Supreme Court of the Russian Federation of September 14, 2017 No.78–APG17–12).

The same way, administrative procedures for approvals of the construction facilities appearance have been adopted in a number of other constituent entities, for example: Moscow region, Yamalo-Nenets Autonomous District, municipalities — the cities of Kazan, Simferopol, Yuzhno-Sakhalinsk, Yalta, etc.

However, as shown above, approval of architectural and urban planning is a standalone case in external appearance legal regulation; and relates, as a rule, only to the facade. Meanwhile, by virtue of the proposed regulation landscape reconstruction is a visual representation of the facility not only in terms of beautification of the community territory, but also in terms of the anthropogenic load of the capital construction facilities on natural resources, including consumed resources: water (consumption, sewage), air (greenery) and space (zones, land plots) — the load that a community makes on the environment and natural resources.

It should be remarked that the legal nature of relationship in territory development and, makes it possible to classify a construction contract into several categories by the parties involved thereto: the customer is a public authority (such relations are usually governed by the Federal Law No.44–FZ of 05.04.2013 "On the contract system in procurement of goods, works, services to meet state and municipal needs"); parties to the contract are private persons — participants in shared construction (governing law is Federal Law No.214–FZ of 30.12.2004 "On Participation in Shared Construction of Apartment Buildings and Other Real Estate Facilities and on Amending Certain Legislative Acts of the Russian Federation"); and both parties are entrepreneurs liaised by investment relations — governing law is the Federal Law No.39–FZ of 25.021999 "On investment activities in the Russian Federation in the form of capital investments." Obviously, each category and type of contractual relations has its own peculiar characteristics in terms of the rights and obligations of the parties, and in case of public entity the situation is more complicated, since the latter can influence the contractual relationship. Any of the listed contractual relations can be supplemented with landscape reconstruction provisions.

However, it is an ordinary situation that a developer gets a building permit, which serves as a starting point for the parties to fulfill their counter obligations under a contract, related to construction as a type of business.

The law enforcement research articles show that a construction permit confirms the compliance of the designed construction with the requirements of both urban planning and land legislation. For instance, E.A. Ostanina points out that this approach is supported by Article 51 of the Urban Planning Code of the Russian Federation, and by the logic of legal practice, which severely punishes construction without a permit[59]. However, this document also one more practical effect in terms of claims about unauthorized construction. The law enforcement trend focused on legalization of already finished capital construction projects used to be applied by the courts was identification of list of actions to get a missing construction permit and, after it has been obtained, recognition of the construction facility as meeting requirements of Article 222 of the Civil Code of the Russian Federation, that is, claiming the facility as legally constructed[60]. However, we gradually started to realize that a capital construction facility shall comply not only with sanitary-hygienic, fire-prevention regulation, building codes and rules, but also with urban (engineering) planning, social and communal infrastructure to ensure sustainable life of residents of such capital construction facilities; thus, this shift in understanding led to a gradual change in legal practice and amendments in the law on unauthorized construction (Federal Law of August 3, 2018 No.339–FZ "On Amendments to Part One of the Civil Code of the Russian Federation and Article 22 of the Federal Law "On the Enactment of Part One of the Civil Code of the Russian Federation"). Obviously, development of such understanding of capital construction permits should, over time, incorporate also general ecological and aesthetic ideas of the majority about the construction, which will satisfy not only functional needs of the customer, but the needs of the community. Anthropogenic load in off-design, or rather, non-complex development (otherwise called point-development) brings up the issue of limited communal resources, followed by administrative limitation in utilities consumption. Striking evidence of such situation is the Russian resort city of Sochi[61].

Regulation in the construction relations can be further improved by combining construction-regulating procedures and civil right regulation procedures related to construction facilities in terms of their legal and economic acknowledgment as real

[59] Ostanina, E. A. What Does the Building Permit Permit? Commentary on the Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated September 27, 2016 No.309–ES16–5381 // The Herald of Commercial Justice of Russia. 2016. No.11. P. 19.

[60] Shcherbakov, N. B. The Value of Building Permits. Commentary on the Resolution of the Presidium of the Supreme Court of the Russian Federation Dated 11.11.2015 in Case No.301–PEK15 // The Herald of Commercial Justice of Russia. 2016. No.1. P. 25–27.

[61] Memo "Interruptions in water supply in the Central District of the city discussed on November 20 at the operational headquarters meeting, held by Aleksey Kopaigorodsky the head of the resort," like many others, illustrates the situation with district water supply interruptions in Sochi [Electronic resource]. URL: https://kubnews.ru/obshchestvo/2020/11/20/zhiteli-sochi-chetvertyy-den-ostayutsya-bez-vody/ (date of access: 26.04.21). Similar note [Electronic resource]. URL: http://www.privetsochi.ru/blog/sitiproblem/88022.html (date date of access: 26.04.21).

estate. For example, it is proposed to combine commissioning of a capital construction facility and registration of the title into a single procedure[62].

However, there might be an another trend, also focused on optimization of relations under a construction contract: to combine the procedure for obtaining permits for earthworks (preparation of land to make it suitable for construction), construction permits, and registration the land with the urban planning plan; which shall make a unified information and support document, indicating compliance (non-compliance) of the construction facility with the requirements of engineering, social and communal infrastructures, which will be supported by a digital platform offering visualization of actual technical condition of the capital construction facility, and visualization of the planned environmental and aesthetic reconstruction intended for beautification of the developing territory. Such digital optimization on a single platform will gradually provide visual representations not only about development in compliance with general settlement plan, but also about general anthropogenic load together with real proposal of required compensatory or reconstruction measures in order to restore the balance of natural resources, impaired during construction of the facility.

In practice, before initiating capital construction, it is necessary to perform so-called earthworks and felling (demolition) of green spaces, and ensure connection of the constructed (reconstructed) facility to the utilities networks. In a formal legal sense, before obtaining a building permit, as specified in Part 2 Article 48 of the Civil Code of the Russian Federation, it is necessary to prepare project paperwork, which means a package of documents with text materials annexed with maps (diagrams) that describe architectural, functional and technological, structural and engineering solutions for construction or reconstruction of capital construction facilities or their parts. Regional landscaping-governing legislation uses a legal institution of earthworks permit, as a rule, it is called an order for earthworks. To give evidence of regional regulation, we can name Article 20 of the Law of Moscow dated April 30, 2014 No.18 "On Landscape Improvement in Moscow", Resolution No.2433 of the Administration of Yekaterinburg, Sverdlovsk Region dated November 27, 2020 "On Approval of Administrative Regulations for the Municipal Service "issue of earthworks permit", Resolution No.3585 of the Executive Committee of Kazan Municipal Unit of December 7, 2020 "On Amending No.4520Resolution of the Executive Committee of Kazan dated 01.08.2014 "On Approval of Administrative Regulations", etc. There is no legal uniformity in term of earthworks here, but, as a rule, it means work related to excavation of soil to a depth of more than 30 cm (except of arable work), installation and driving of piles during construction of facilities and structures of all types, underground and on-the-ground engineering networks, communications, as well as dumping soil to a height of more than 50 cm (as per Article 4 of the Law No.191/2014–OZ of Moscow Region of 30.12.2014 "On Landscape Improvement in Moscow Region").

The same refers to a permit for cutting green spaces. The permit application procedure is regulated either at the municipal or regional levels, depending on distribution and redistribution of landscaping authorities. For example, in Moscow, the permit application procedure (cutting consent) is regulated by the No.121–PP Decree of Moscow Government of February 27, 2007 "On Amending Resolution No.743–PP of Moscow Government dated September 10, 2002 ", which approved the Rules for creation, maintenance and protection of green spaces in Moscow.

Similar procedure is applied approval of the architectural and town-planning appearance of the capital construction facility, examples of which can be seen above.

Insofar as the above-described procedures are not within the unified system of legal regulation and not linked with causal relation, developers usually ensure them simultaneously, for the alleged purpose of time saving. It means that an earthworks permit application and the earthworks are performed in isolation from demolition (cutting) of green spaces, the project documentation for the capital construction is prepared and approved in accordance with the terms of reference of the construction contract in isolation from other routines. In fact, all these measures are actually construction works of the so-called zero cycle, thus, the developer applies for a construction permit, while performing construction. However, it is quite possible that a construction permit will not be issued, and are more than enough formal legal reasons to refusal, so in this case results construction works shall be qualified as an unauthorized building subject to demolition. There is bright and illustrative example of such a situation in the case No.A75–12454 / 2016, resolved by the Decision No.304–ES18–2923 of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation dated 07.08.2018 — the case is included in the Review of Judicial Practice of the Supreme Court of the Russian Federation, No.4, 2018. There plenty of cases that show obvious overconfidence of the developer who wants to save time, but comes to negative results and failure of the construction contract. It seems that construction technologies and speed of construction are somewhat ahead of the administrative and licensing system that regulates relations in capital construction.

The concept of "New Rhythm of Construction", that is expected to ensure normative constructional regulation under the National Action Plan aimed at improvement of employment and income, economic growth and long-term structural changes in the national economy (approved by the Government of the Russian Federation on September 23, 2020, protocol No.36, section VII), can accelerate construction procedures, reform the regulatory legal system in urban planning and construction.

[62] On amendments to Article 55 of the Urban Planning Code of the Russian Federation and certain legislative acts of the Russian Federation in terms of ensuring state registration of titles cased on a commissioning permit for a capital construction facility: draft Federal Law No.1099901–7 [Electronic resource] // System ensuring legislative activity. URL: https://sozd.duma.gov.ru/bill/1099901–7 (date of access: 31.01.21).

We believe that for the purpose of reformation it is advisable to get a unified digital space that will combine all licensing procedures, before, during and after obtaining a construction permit, such base shall also involve permissive (prescriptive) requirements for landscape reconstruction on a developed territory, when a capital construction facility is commissioned. This procedure can be called "digital integrated building permit". The idea of digitalization of the construction industry is not a new doctrine. For instance, we agree Yu.G. Leskova that application of information (digital) technologies and creation of digital platforms for self-regulation of construction is an urgent matter and requires legal regulation[63].

Besides, public law regulation of licensing in construction relations provides more opportunities for development in this direction. For instance, these relations can be regulated in the current system of information support for the developer in urban planning (for an unlimited number of access), where an Urban Plan for the Land (hereinafter referred to as the UPL) is created. In accordance with Part 1 Article 57.3 of the Civil Code of the Russian Federation, UPL is a document that contains information for the purpose of architectural and civil engineering design, construction and reconstruction of real estate within the limits of land; in some cases, UPL can be obtained before selection of land based on an approved land survey project and (or) layouts of the land on the cadastral plan of the territory[64]. UPL is presented in a package of documents for a construction permit. In accordance with clause 16, part 3 Article 57.3 of the Civil Code of the Russian Federation, UPL shall include details of public authorities that establish requirements for improvement of the territory, that is, the plan only shows the list of requirements, but not the fact that the developer complies with them or has applied for a permit to comply with them.

This information must be recorded in box 10 of the UPL form, approved by Order No.741 / pr of the Ministry of Construction of Russia dated April 25, 2017.

Thus, the current regulations provide an opportunity to prohibit commencement of land preparation for development and legalization of the so-called earthworks on the federal level by clarifications to be introduced into the UPL form, and first of all, by applying digital visualization of the construction facility and the existing landscape reconstruction of the territory. Such clarifications shall not only list requirements for the territory improvement, but also divide them into categories: 'to be fulfilled before obtaining a construction permit', and 'to be fulfilled after commissioning of the facility'; also, clarifications shall include totally consumed resources (averaged anthropogenic load). It would be recommendable to ensure further sustainability of the construction sector by implementing requirements to landscape (or architectural and landscape) reconstruction that include not only land improvement works, but also making the land (as an element of the planning structure) comply with the natural environment of the climatic zone, which means not only decorative elements and greening, but also landscape works and works to preserve of macroclimatic conditions, including hydrological ones. The prospect of transforming the rules of community beautification into the rules of architectural and landscape reconstruction is still under discussion, however, public authorities are creating tools to accumulate opinions of residents[65], and construction industry in general must take this opinion into account as a formal element.

One can object that improvement of the territory falls within the powers of local self-government bodies and therefore in cannot be included into federal regulations under the existing system of the powers separation; however, this objection is not sound, since we imply that federal regulations shall only include information whether improvement requirements are complied with, and details of the requirements. This consolidation of information does not contradict the principles of organization of local self-government[66]. Therefore, UPL can record not only improvement requirements, but also the fact of their fulfillment so that the next permissive stage — issue of a construction permit shall no longer rely on tentative agenda that allows the developer to save time for their benefit, but shall ensure legal certainty in the sequence of the licensing procedures.

In order to put into life the above-described plans of the Government of Russia in terms of digitalization of the construction industry, it is important to create a digital integrated construction permit, which will cover the whole range of works, starting from land preparation (earthworks, felling, etc.). The integrated permit will prescribe landscape reconstruction measures; that being completed (the permit being redeemed), the facility will be commissioned and the title to the constructed or reconstructed facility will be registered. Moreover, creation of a united database (big data) about the total load will give the idea not only about the anthropogenic load, but also about protection of personal non-property rights of tenants — the rights to a favorable environment. This is a new characteristic in protection of subjective rights of parties to civil circulation and public regulation of urban planning, which is widely discussed in the modern research papers as digital transformation of subjective civil rights[67].

Based on the foregoing, we can, firstly, claim the necessity to introduce a digital construction permit as an obvious stage in development of the construction industry that meets modern requirements of the structure of a construction contract;

---

63 Leskova, Yu. G. Application of Information (Digital) Technology in Self-Regulation as a Condition for the Development of the Construction Sector and the Legal // Civil Law. 2018. No.5. P. 9–11.

64 Mayboroda, V. A. Urban Plan of Land Plot: Substitution of Managerial Function for the Information One // Town-planning Law. 2016. No.3. P. 3–6.

65 See, for instance, Order No.913/pr of the Ministry of Construction of the Russian Federation of December 30, 2020 "On approval of guidelines for involvement of citizens, their associations and other persons in issues of urban environment development".

66 Babichev, I. V. Regulations and Principles of the European Charter of Local Self-Government as a Component of the Legal Doctrine of the Russian Self-Government Model // Constitutional and Municipal Law. 2018. No.6. P. 67–74.

67 Razuvaev, N. V. Digital Transformation of Subjective Civil Rights: Problems and Prospects // Theoretical and Applied Law. 2021. No.1. P. 18–38.

secondly, include in the legal concept of a digital integrated construction permit other requirements of land improvement, including landscape reconstruction requirements; thirdly, reorganize the structure of the urban plan of the land, which must be obtained when applying for an ordinary construction permit and include a visual digital representation of the future appearance of the capital construction facility and landscape reconstruction as a set of measures compensating for the load on natural resources; and only when such measures are performed, the developer shall obtain a similar integrated (digital) permit for commissioning.

References

1. Babichev, I. V. Regulations and Principles of the European Charter of Local Self-Government as a Component of the Legal Doctrine of the Russian Self-Government Model [Normy-printsipy Evropeiskoi khartii mestnogo samoupravleniya kak sostavnaya chast' pravovoi doktriny rossiiskoi modeli mestnogo samoupravleniya] // Constitutional and Municipal Law [Konstitutsionnoe i munitsipal'noe pravo]. 2018. No.6. P. 67–74.
2. Leskova, Yu. G. Application of Information (Digital) Technology in Self-Regulation as a Condition for the Development of the Construction Sector and the Legal Regulation [Primenenie informatsionnykh (tsifrovykh) tekhnologii v samoregulirovanii kak uslovie razvitiya stroitel'noi otrasli i pravovogo regulirovaniya] // Civil Law [Grazhdanskoe pravo]. 2018. No.5. P. 9–11.
3. Mayboroda, V. A. Urban Plan of Land Plot: Substitution of Managerial Function for the Information One [Gradostroitel'nyi plan zemel'nogo uchastka: novatsiya upravlencheskoi funktsii v informatsionnuyu] // Town-planning Law [Gradostroitel'noe pravo]. 2016. No.3. P. 3–6.
4. Ostanina, E. A. What Does the Building Permit Permit? Commentary on the Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated September 27, 2016 No.309–ES16–5381 [Chto razreshaet razreshenie na stroitel'stvo? Kommentarii k opredeleniyu Sudebnoi kollegii po ehkonomicheskim sporam VS RF ot 27.09.2016 № 309–EHS16–5381] // The Herald of Commercial Justice of Russia [Vestnik ehkonomicheskogo pravosudiya]. 2016. No.11. P. 19–23.
5. Razuvaev, N. V. Digital Transformation of Subjective Civil Rights: Problems and Prospects [Tsifrovaya transformatsiya sub"ektivnykh grazhdanskikh prav: problemy i perspektivy] // Theoretical and Applied Law [Teoreticheskaya i prikladnaya yurisprudentsiya]. 2021. No.1. P. 18–38.
6. Shcherbakov, N. B. The Value of Building Permits. Commentary on the Resolution of the Presidium of the Supreme Court of the Russian Federation Dated 11.11.2015 in Case No.301–PEK15 [Znachenie razresheniya na stroitel'stvo. Kommentarii k postanovleniyu Prezidiuma VS RF ot 11.11.2015 po delu № 301–PEHK15] // The Herald of Commercial Justice of Russia [Vestnik ehkonomicheskogo pravosudiya]. 2016. No.1. P. 25–27.

Civil Liability of an Insolvency Practitioner: Actual Problems

Denis O. Yarovoy
Candidate for a Master's Degree, The North-West Institute of Management — Branch of the Russian Presidential Academy of National Economy and Public Administration, Saint Petersburg, Russian Federation; 9119687@gmail.com

ABSTRACT
The article is devoted to the consideration of the civil liability of an insolvency administrator in the performance of his duties in the framework of insolvency (bankruptcy) cases. Topical issues related to the civil liability of an insolvency administrator (recovery of damages) are considered. Three issues are identified that stakeholders face in the process of determining, proving and recovering losses. The conclusions about the impact of the mechanism for collecting losses on increasing the efficiency of bankruptcy procedures are summarized.
Keywords: insurance of an insolvency administrator, losses, liability of an insolvency administrator, bankruptcy

Insolvency administrator is engaged into professional activity, regulated and covered by Federal Law No.127–FZ of October 26, 2002 "On Insolvency (Bankruptcy)" (hereinafter referred to as the Bankruptcy Law).

Russian legislation provides a whole range of measures to ensure integrity of work of an insolvency administrator, by various types of liability imposed on the administrator[68]. Article 20.4 of the Bankruptcy Law determines liability of the insolvency administrator when the latter performs its duties during insolvency (bankruptcy) procedures. Clause 4 of this article states that one remedy for defaulted duties of the administrator is compensation for losses caused to the debtor, creditors and other persons. This is a civil remedy, and the amount of losses is determined in accordance with Article 15 of the Civil Code of the Russian Federation (hereinafter the Civil Code of the Russian Federation). However, norms of the Civil Code of the Russian Federation are applied with due regard to priority of the Bankruptcy Law, which are special norms.

Since compensation for damages is civil liability, the person claiming their compensation must prove that their rights have been violated, that they suffered losses and specify their amount, that there are cause-effect relations between violation of the right and the losses incurred.

Despite a widespread law enforcement practice in losses recovery, still there are some important issued associated with civil liability of an insolvency administrator.

In particular, the first issue is related to determination of the amount of losses incurred.

The second topical issue arises when the insolvency administrator has no financial sources to compensate for the losses caused.

The third issue relates to proving the liability of an insolvency administrator and determining remedy, in case the insolvency (bankruptcy) procedure involved activities of several insolvency administrators.

Below there is a more detailed description of modern issues related to civil liability of an insolvency administrator.

Clause 11 of Information Letter No.150 of the Presidium of the Supreme Arbitration Court of the Russian Federation of May 22, 2012 "Review of Arbitration Courts Practice in disputes related to dismissal of insolvency administrators " specifies that losses caused to the debtor, as well as to its creditors, shall be deemed as any decrease or loss of possibility to increase the bankruptcy estate, which occurred as a result of illegal actions (omissions) of the insolvency administrator.

In accordance with paragraph 1 Article 15 of the Civil Code of the Russian Federation, there are two types of losses: real damage and lost profits; the latter, as long-term judicial and arbitration practice shows, is extremely difficult to prove[69].

Analyzing characteristics of losses, we should focus on the phrases "loss of opportunity" and "loss of profit". Legislation does not provide a detailed explanation of these definitions, which may result in their different interpretations in legal proceedings and, consequently, affect the amount of recoverable losses.

One of the most common circumstances for recovering losses from the insolvency administrator is improper work to challenge the debtor's transactions, in particular, expiry of the limitation period on actions. In this case, through the fault of the insolvency practitioner, it is impossible to increase the bankruptcy estate. However, if there is no legal instrument that recognizes the transaction as null and void and reverses the transaction (which can either be return of property to the bankruptcy estate or recovery of the market value of the property), the applicant cannot name the amount of the losses caused.

[68] Saharova, Yu.V. Legal Problems of Realization of the Principle of "Good Faith" in the Course of Bankruptcy // Siberian Law Review. 2017. No.2. P. 44–49.
[69] Vasilevskaya, L.Yu. Damages in Russian and Anglo-American Law: Differences between Conceptual Approaches // Russian Legal Journal. 2018. No.2. P. 51–62.

No possibility to increase the bankruptcy estate through reversing the transactions can be considered as a lost profit of the debtor and creditors. Since loss of profits is lost income, in case of disputes related to reimbursement of the lost profit, it should be taken into account that calculations presented by the claimant are usually approximate and probabilistic. However, it cannot serve as a reason to refuse a claim[70]. E.V. Murashkina in her thesis addresses the issue of determining the amount of losses, and believes that it is no good talking about compensation for lost profits in insolvency (bankruptcy) cases; instead of full compensation of losses, the courts should rather consider the damage caused[71].

The position of the Supreme Court of the Russian Federation states: the court cannot legally refuse to satisfy the creditor's claim for compensation for losses caused by defaulted obligation, only because the amount of losses cannot be reasonably established. In such cases, the court shall determine the amount of damages to be compensated, taking into account all circumstances of the case, based on the principles of fairness and proportional liability for defaulted obligation[72, 73].

So, the current judicial practice binds the court to determine cause-and-effect relations between actions of the insolvency administrator and the amount of losses to be recovered, which often results the fact that the courts of first instance refuse to satisfy the claims for losses recovery from the insolvency administrator; and thus their decisions are further appealed in higher instances, which confirmed by current practice (Resolution of the Thirteenth Arbitration Court of Appeal dated 07.08.2020 in case No.A56–76171 / 2016; Resolution of the Thirteenth Arbitration Court of Appeal dated 20.07.2020 in case No.A56–58410 / 2013; Resolution of the Arbitration Court of the North-West District of August 26, 2020 in case No.A44–3084 / 2017)

But even if higher instances reverse court decisions refusing to recover damages, it cannot resolve the issue of determining the amount of damage caused, which ultimately can be a problem both for the insolvency administrator and for creditors with the debtor.

The way out of this problem seems to be severization of requirements for plaintiffs in terms of determining the amount of damages recovered, in particular, use of expert opinions, namely: use of forensic examinations to determine the market value of property, sale of which was not contested by the insolvency administrator and the limitation on actions for which was missed; use of expert examinations to determine the decrease in value of the debtor's property that occurred due to actions or omissions of the insolvency administrator; use of examinations to determine the actual value of the debtor's receivables, which were not collected by the insolvency administrator and the deadlines of which were missed, or the legal entity was excluded from the Unified State Register of Legal Entities (USRLE).

This mechanism allows avoiding uncertainties in the amount of recoverable losses, and minimizes abuse of the creditors' right to impose sanctions on the insolvency administrator for losses, the amount of which is declared arbitrarily.

Another urgent issue is enforcement of losses recovery. If actions of the insolvency administrator are recognized as improper and the losses caused to the debtor, creditors and other persons are to be recovered, the issue of indemnification of the losses, that is, actual enforcement of the judicial deed, is very relevant.

There are several sources to compensate for the damages caused:

- the insolvency administrator compensates for losses at its own expense;
- the losses are paid by an insurance company that insured liability of the insolvency administrator;
- the losses are compensated from a compensation fund of a self-regulatory organization, where the insolvency administrator is a member;
- losses are recovered at open auctions.

As practice shows, the cases when the insolvency administrator compensates for losses at its own expense, come down to compensation of very small amounts. Let's extrapolate statistics of personal bankruptcy. According to the Unified Federal Register of Bankruptcy Information (hereinafter referred to as the UFRBI), at the end of 2019 the share of claims satisfied among the claims filed amounts to 3.5%[74]. Therefore, recovery of losses from an insolvency administrator, including under his personal bankruptcy procedure, is an unpromising and lengthy process.

The bankruptcy administrator's liability for causing losses to parties in the bankruptcy case can be insured for at least 10 million rubles. (Article 24.1 of the Bankruptcy Law), also in cases listed by the Bankruptcy Law, the administrator executes an additional insurance contract (if the book value of the debtor's assets exceeds RUB 100 million; a more detailed calculation of additional insurance is described in paragraph 2 Article 24.1 of the Bankruptcy Law), however, the insurance compensation of 10 million rubles is the most common. Also, requirements to execute an additional insurance contract do not apply to some debtors: private persons and absent debtors.

---

70 Resolution of the Plenum of the Supreme Court of the Russian Federation of June 23, 2015 No.25 "Application of certain provisions of Section I Part One of the Civil Code of the Russian Federation in the courts".

71 Murashkina, E.V. Civil Liability of an Insolvency Administrator: Abstract of... Dis. Can. Legal Entity Sciences. Moscow, 2008. 23 p.

72 Writ of the Supreme Court of the Russian Federation dated 26.10.2017 No.305–ES17–8225 [Electronic resource]. URL: https: // www.vsrf.ru/stor_pdf_ec.php?id=1590162 (date of access: 15.12.2020).

73 Application of clauses of the Civil Code of the Russian Federation on liability for defaulted obligations by the courts: Resolution No.7 of the Plenum of the Supreme Court of the Russian Federation of March 24, 2016 .

74 Results of procedures in bankruptcy cases over 20 19 year [Electronic resource] URL: https://fedresurs.ru/news/d9263eb1–10a9–43db-8755–3dc0add94bd3?attempt=1 (date of access: 15.12.2020).

Another way to reimburse losses caused by an insolvency administrator is payment from a compensation fund of a self-regulatory organization, where the administrator is a member. In accordance with paragraph 11 Article 25.1 of the Bankruptcy Law, the amount of such payment may not exceed 50% of the compensation fund of a self-regulatory organization. The minimum size of the compensation fund is 50 million rubles; so, on average, the payment will not exceed 25 million rubles.

It should be pointed out that paragraph 11 Article 25.1 of the Bankruptcy Law shall apply if the bankruptcy proceedings were initiated after 01.01.2019. Other cases are covered by the previously legal norms, namely, the amount of compensation is not more than 5 million rubles.

Losses recovered from the insolvency administrator are, actually, the debtor's receivables, and, like other receivables, can be sold through electronic trading. As practice shows, in most cases, receivables are sold at the stage of public offering at the price that greatly differs from the nominal value. In this case, costs associated with sale of receivables (losses) should also be taken into account: costs of publications in the Kommersant newspaper, the UFRBI, services of an electronic trading platform, etc., which ultimately make the source of debt repayment unprofitable.

Urgent nature of the issue on losses recovery enforcement is confirmed by statistical data. For instance, from January to September 2019, the UFRBI published 65 applications for losses recovery from insolvency administrator totaling RUB 683 million.[75] It should be noted that these statistics are based only on the data that the insolvency administrator entered into the UFRBI.

In 46% the amount of losses is less than 1 million rubles, in 37% the amount of losses ranges from 1 to 10 million rubles, in 15% — from 10 to 100 million rubles, and in 2% the amount of recovered losses exceeds RUB 100 million.

Thus, 83% of cases presents a real possibility to enforce court rulings on recovering losses from the insolvency administrator (excluding the cases when insurance organizations and self-regulatory organizations fail to perform their obligations to compensate for losses), and in 17% of cases the sum is limited to the amount of 35 million rubles. ... (15 million rubles in case of procedures initiated before 01.01.2019).

Summarizing the facts listed above, we can state that current mechanism of civil liability is focused more on imposing liability on the arbitration manager, rather than compensation for damage caused to the affected parties.

This challenge can be resolved by improving the insuring mechanism for insolvency administrator liability, and generation extra funds in self-regulatory organizations, which could be used to compensate for losses caused by the insolvency administrator. Internal policies of self-regulating organizations of insolvency administrators (SRO IA) have a clause about payment of membership fees by insolvency administrators, such fees are intended to ensure that activities of SRO IA comply with statutory goals and objectives. Apart from a compensation fund is seems reasonable to generate reserve funds form membership fees of insolvency administrators, which could serve as a source of finance for compensation of losses inflicted by insolvency administrators.

The third topical issue (it cannot be called a problem, since there is a well-established judicial practice on this issue), considered in herein, is specification of the liability of an insolvency administrator. By to legal requirement, a person claiming damages shall prove, among other things, a cause-and-effect relation between actions of the inflictor and the damage claimed.

Quite often, under insolvency (bankruptcy) procedures of a debtor, several insolvency administrators operate to perform bankruptcy (external) administrator duties. Accordingly, when applying to the court the applicant shall prove that it was actions of a certain insolvency administrator that caused the losses[76].

This question was discussed in the Resolution No.62 of the Plenum of the Supreme Arbitration Court of the Russian Federation of July 30, 2013 "On some issues of compensation for losses by members of the legal entity bodies", which explains that arbitration courts shall assess whether commissions of a certain person fall within the duties of the manager(external or bankruptcy administrator), taking into account usual business practice and the scope of business of the legal entity.

That is, when assessing actions of the insolvency administrator, the courts shall determine whether during the term of the office the latter had an obligation to perform the actions, which, if failed, could have led to losses in the applicant's opinion.

This case can be illustrated by inventory. In accordance with clause 2 Article 129 of the Bankruptcy Law, a liquidator shall make an inventory of the assets. However, the Bankruptcy Law does not oblige to re-inventory the assets, when the insolvency administrator is changed. Accordingly, if the first insolvency administrator disposes of the assets that were not inventoried and were not known to the second administrator, the court shall assess degree of liability of each insolvency administrator, the cause and effect relations between actions (omissions) of each administrator and the losses caused.

In case the court finds a cause-and-effect relations between actions (omissions) of two (or more) administrators, which resulted in losses, the losses shall be recovered jointly (Resolution No.A52–3471 / 2013 of the Arbitration Court of the North-West District of 16.05.2019)

It may be difficult for the applicant to prove cause-and-effect relations between actions (omissions) of a certain insolvency administrator and the losses incurred. When determining degree of liability of each insolvency administrator who

[75] Bankruptcy procedures: Federal resources statistics [Electronic resource]. URL: https://download.fedresurs.ru/news/Aleksey%20Yukhnin% 20Statistics% 20EFRSB% 20Ural% 20forum% 202019.pdf (date of access: 15.12.2020).

[76] Kolesnikova, S.G. Civil Liability of an Insolvency Administrator for Losses Caused by Non-Performance (Improper Performance) of the Duties Assigned to Him // Arbitration Disputes. 2018. № 1. P. 32–82.

operated in an insolvency (bankruptcy) case, the court shall pay attention to the measures actions taken by each subsequent administrator in order to minimize negative consequences of their predecessors or to hold them liable. In accordance with clause 4 Article 20.3 of the Bankruptcy Law when performing procedures applied in the bankruptcy case, the insolvency administrator shall act in good faith, reasonably and in the interests of the debtor, creditors and the public. Thus, failure to take due action by the insolvency administrator against a previous administrator serves as another reason to be held liable for losses.

In general, the mechanism of civil liability of an insolvency administrator is an effective way in terms of performing federal duties imposed on the administrator, i.e. to act in good faith, reasonably and in the interests of the debtor, creditors and the public.[77] The legal remedy of defaulted liability of an insolvency administrator — losses recovery — is becoming an increasingly common way to protect creditors' interests in insolvency (bankruptcy) procedures every year.

Issues arising out of the application this mechanism affect both creditors (in terms of actual enforcement of court rulings on compensation for the damages) and insolvency administrators (in terms of criteria for determining the amount of recoverable losses and distribution of legal remedy). Therefore, more attention should be paid this issue both in law enforcement practice and at the legislative level.

References

1. Vasilevskaya, L.Yu. Damages in Russian and Anglo-American Law: Differences between Conceptual Approaches [Vozmeshchenie ubytkov v rossiiskom i anglo-amerikanskom prave: razlichie kontseptual'nykh podkhodov] // Russian Legal Journal [Rossiiskii yuridicheskii zhurnal]. 2018. No.2. P. 51–62.
2. Kolesnikova, S.G. Civil Liability of an Insolvency Administrator for Losses Caused by Non-Performance (Improper Performance) of the Duties Assigned to Him [Grazhdansko-pravovaya otvetstvennost' arbitrazhnogo upravlyayushchego za ubytki, prichinennye neispolneniem (nenadlezhashchim ispolneniem) vozlozhennykh na nego obyazannostei] // Arbitration Disputes [Arbitrazhnye spory]. 2018. № 1. P. 32–82.
3. Murashkina, E. V. Civil Liability of an Insolvency Administrator: Abstract of... Dis. Can. Legal Entity Sciences [Grazhdansko-pravovaya otvetstvennost' arbitrazhnogo upravlyayushchego: avtoref. ... dis. k. yu. n.]. Moscow, 2008. 23 p.
4. Saharova, Yu.V. Legal Problems of Realization of the Principle of "Good Faith" in the Course of Bankruptcy [Pravovye problemy realizatsii printsipa dobrosovestnosti v protsesse bankrotstva] // Siberian Law Review [Vestnik Omskoj yuridicheskoj akademii]. 2017. No.2. P. 44–49.
5. Yarovoy, D.O. Fiduciary Duties in Bankruptcy: Performance Limitations [Fidutsiarnye obyazannosti v bankrotstve: ogranicheniya ispolneniya] // Government and Business. Modern Problems of Economics. Materials of the X International Scientific and Practical Conference. Saint Petersburg, April 25–27, 2018 [Gosudarstvo i biznes. Sovremennye problemy ehkonomiki. Materialy X Mezhdunarodnoi nauchno-prakticheskoi konferentsii. SPb., 25–27 aprelya 2018 g.]. The North-West Institute of Management — Branch of the Russian Presidential Academy of National Economy and Public Administration. V. 5. P. 104–108.

[77] Yarovoy, D.O. Fiduciary Duties in Bankruptcy: Performance Limitations // Government and Business. Modern Problems of Economics. Materials of the X International Scientific and Practical Conference. Saint Petersburg, April 25–27, 2018 The North-West Institute of Management — Branch of the Russian Presidential Academy of National Economy and Public Administration. V. 5. P. 104–108.

Role of Criminal Prosecution in the System of Criminal Procedural Institutions

Nataliya V. Lantukh
Professor of Chair of Criminal Process of St. Petersburg University of the Ministry of Internal Affairs of Russia, Saint Petersburg, Russian Federation, PhD of Jurisprudence, Associate Professor; lana-lant@yandex.ru

ABSTRACT
The article reveals the concept of the legal institution of criminal prosecution in criminal proceedings, analyzes the definition of the subject and method of legal regulation of criminal prosecution, the subject composition and the object of criminal prosecution. The author considers the rules governing the institution of criminal prosecution, which originates from the general category of a claim in law. The article contains proposals for the development of the theory of criminal prosecution as a criminal procedure institution from the standpoint of identifying its system-forming properties, legal nature, and various degrees of its effectiveness for the criminal process.
Keywords: criminal procedure law, criminal procedure institute, criminal prosecution, criminal claim, publicity, subjects of criminal prosecution, object of criminal procedure relations, suspicion, accusation, criminal prosecution

The diversity of norms in the modern law presupposes more criteria on which the structural units of an particular field of law can be classified. Taking into account the real possibility of grouping and classifying them according to some common basic principles is also important, because it could help to arrange all the norms, institutes and to bind them logically within the scope of the law's system[78]. This condition is actual according to the field of criminal procedure law as well. The problem of criminal procedure institutes takes one of the important "instrumental positions", according to which it is possible to analyze the condition of criminal procedure system, to predict the optimal mechanism of legal regulation in this field[79]. Exactly law institutes in criminal law, their system and developing nowadays need to be carefully studied and the conception of them need to evolve. According to M.V. Dukhovsky, "the criminal procedure law is the "pure science", when it discovers the laws, which rule the development of the criminal procedure institutes in connection "with the culture", and its applied goal is to bound a system in accordance with all the requirements of present"[80].

It must be mentioned, that the definition's problem of the concept, features, kinds of criminal procedure law institutes remain unexplored until now, although this concept is rather common. So, proof, investigative actions, arrest, criminal procedure constraint, rehabilitation, judicial review, procurator's supervision etc[81]. are considered to be criminal procedure institutes. In connection with this, and taking into account the social purpose, goals and objectives, fundamental points of criminal process, the common institutes in criminal procedure law must be defined on the first stage. And the criminal prosecution is such a necessary and obligatory law institute.

The criminal prosecution plays the role of "basic" institute, which is the foundation of the criminal procedure system and ensures its progressive motion in a criminal case[82]. The criminal prosecution is an essential part of the crime procedure action, what is an initial component of the action about the defense from accusation, and of considering of a criminal case on the merits[83]. This law construction preserves its primary meaning for all models of criminal legal procedure, on every stage of criminal process and in every state.

At the same time, in national systems can be used very different means, methods and forms, which can de expressed in organization and functioning of the considering law institute.

Although lawmaker defined the concept and the content of criminal prosecution in Article 3 of the Code of Criminal Procedure of Russian Federation , there are severe defects in the law construction and regulation. So, in the Code of Criminal Procedure of Russian Federation the criminal prosecution is defined in different meanings: a) criminal procedure activity; b) criminal procedure function and c) proceeding of a criminal case.

In our opinion, in order to normative concretization of the legal character and to consider the criminal prosecution as procedural activity against a concrete person, it is necessary to add appropriate amendments and additions to certain

78 Umarova, A. A. Institute of Legal Restrictions: General Theoretical Research: Abstract Dis. ... Candidate of Legal Sciences: 12.00.01. Kursk, 2018.
79 Ckatuayeva V.V. Criminal Prosecution: training manual for students of Universities. M.: Urait, 2021.
80 Duckovsky M.V. Russian Criminal Proceeding. SPb, 1902. Pp. 5, 6.
81 Volodina, L. M. Actual Problems of Criminal Proceedings. M.: Jurlitinform, 2020.
82 Baev, O. Ya. Criminal Procedural Investigation of Crimes: System and Quality. M.: Yurlitinform, 2007. Pp. 69–71.
83 Talalaev, K. A. Criminal Prosecution: The Problems of Definition. 2020. V. 6. No.4. Pp. 142–143.

clauses of the Code of Criminal Procedure of Russian Federation. Particularly, the most reasonable is adjust the contains of the Article 3 of Code of Criminal Procedure of Russian Federation in accordance with mentioned interpretation of criminal prosecution.

Because of ambiguity of this concept it is difficult to define the meaning of criminal prosecution in criminal procedure law[84]. That is why it is necessary to define the concept and juridical character of this legal phenomenon, special features of this criminal procedure institute, to set goal, content and stages of criminal prosecution, the subject and object of this version of procedural activity as well as to define their juridical significant results[85].

The main signs of a criminal prosecution as an criminal procedure institute are the following.

- The institute of criminal prosecution is a structure part of law sector, is formally detached and is outwardly expressed in different sections.

So, the Article 5 Code of Criminal Procedure of Russian Federation defines the matter of this concept , Article 3 Code of Criminal Procedure of Russian Federation contains norms about kinds of criminal prosecution, duties of execution of criminal prosecution by officials, the rights of victims and their legal representatives to participation in criminal prosecution, and possibility of criminal prosecution on application of an commercial or other organization as well.

- The contain of criminal prosecution compiles the complex of homogenous law prescriptions (for example, the initiation of criminal prosecution, notification about suspicion, accusation and criminal prosecution, application of preventive measure before indictment, the ending of investigation by the indictment act or resolution, termination of criminal prosecution etc.)
- Relative independent, primary, basic principles are typical for the institute of criminal prosecution, which are logically concluded from relevant normative- and law-prescriptions, or which are directly fixed in particular articles in normative acts. For example: a) principles of criminal procedure law — legality, publicity, presumption of innocence, the principles of criminal law — justice, humanism; b) the institutional principle “non bis in idem” etc.
- The criminal prosecution is the most developed institute of criminal procedure law, characterized by certain unity and integrity of its rules and appropriate forms of their expression and fixing, and which has the common part and a special part as well.

So, in the Articles 21, 21, 27 Code of Criminal Procedure of Russian Federation and in others contains the fixed general provisions of crime prosecution institute; foundations, conditions and procedural order of their realization are detailed in Articles 146, 171, 175, 210, 212, 220, 223.1 Code of Criminal Procedure of Russian Federation.

Beside procedural, criminal prosecution has also criminal-legal content. So, the judicial construction of a crime determines the construction of subject of proofing, and the existence of certain criminal-legal circumstances defines the base for termination of criminal prosecution or criminal case. The conception of sanity or insanity of the person, which is being brought to criminal responsibility, affects the order of application of forced medical measures; the age affects the order of application of pedagogical measures. The categories of criminal responsibility in the criminal law are also closely bound. Criminal responsibility is the consequence of committing a crime in the form of punishment, and criminal prosecution is considered as a consequence of committing a crime in form of an action aimed detection of the incident and exposure of persons committed it.

- Institution of criminal prosecution has its subject of legal regulation, that is activity and particular variety of public relationship, influenced by norms composing this institute.

The subject of legal regulation of concerned institute is activity of authorized bodies and persons concerned to exposure a person at committing a crime or socially dangerous act and to establish the measure of criminal liability of this person and public relations related to this activity. In such a way, the institute of criminal prosecution fixes these relations and stimulates their development in the interests of the state and in the private interests of a person.

Admitting the regulative character of the institute of criminal prosecution, it is necessary to trace its close connection with criminal-procedural legal relationship. Legal relationship, developed within the criminal prosecution, is also an procedure institute; in other words, it is an certain institutional system. The legal norms regulation at criminal proceeding means first of all endowing all parties with appropriate rights and duties, and it is a significant institutional factor.

- Existence of legal means and methods of impact on public relationship, which are specific according to other institutes (for example, means and measures of legal impact on the participants are different at an inquiry production and at preliminary investigation, suspension of proceeding in the case presence of specificity in regulating of proceeding of rehabilitation of a person illegally suspected to criminal prosecution).
- As a rule, law institutes have specific concepts, terms, and judicial constructions. For institute of criminal prosecution the following terms are typical: “suspicion”, “suspect”, “prosecution”, “involvement as an accused”, “termination of criminal prosecution” and others.

---

[84] Mazyuk, R. V. The Institution of Criminal Prosecution in the System of Russian Criminal Procedure Institutions: monography/ scientific supervisor Smolkova I.V. M.: Urlitinform. 2009. Pp. 78–80.

[85] Dikarev I. S. The Prosecution: Clarification of the Notion // Russian Justice. 2013.№9. P.23.

The mentioned features characterize criminal prosecution institute as a rather independent subsystem of a legal branch and a legal structure as whole. It possesses such degree of judicial norms, that without some these norms the regulation of such kind of public relationship is impossible.

The research of the legal nature of criminal prosecution has to be begun with starting positions and destination of this institute in the law. In this case, the mentioned legal phenomenon gets a social background and becomes a concept with a definitive, precisely expressed practical meaning in the system of criminal-law and criminal-procedural regulation.

According to this fact, it is impossible not to agree with R.V.Masyk, who, evaluating the legal nature of criminal prosecution in Russian criminal legal proceeding, believes, that the only one method of cognition of the entity of mentioned category is the definition of its practical meaning through the institute of termination of criminal prosecution[86].

So, the original legal category for institute of criminal prosecution, the significant legal factor, the "starting point" is a criminal claim. The etymology of the word "claim" is closely bound with the concept of requirement, application, appeal to authorized states bodies with the purpose of protection and establishing of liability for a criminal act and for damage caused. At the same time the damage or harm is caused to the most important and significant things for the subject of appeal.

In theoretical meaning the claim, the argument about violation of right is bound with usage of procedural mechanism, which can be concluded either in different kinds of self-regulation the argument as a disagreement, or in inclusion of a third party in a particular legal relationship, who is endowed with the right to consider and to resolve it ("There is no judge in the own house").

Beside this, the dispute implies a potential possibility of a force for realization the criminal liability. But in criminal procedure field the "status" of the act is not only restricted with the interest of a private individual, but also goes beyond this boarders, gets a public meaning, the degree of "social danger" (this concept is used nowadays in criminal law at assessment of encroachments). According to I.J. Foynitsky, "the history of criminal proceeding begins with the domination of private origin... Little by little, the public origin of a criminal proceeding is being developed; it becomes a social, state case... The concept of claim in civil procedure is responds to the concept of prosecution in criminal procedure. It is considered to be the demand of judicial recognition of the right of the state for punishment. Therefore, the prosecution al a claim as well..."[87].

Realizing the right to establish criminal liability measures, the state delegates duties to official bodies to begin criminal proceeding, and — if the information about the involvement of certain persons exist — to begin the process of criminal prosecution against them. Beside this, on the first stage of the activity its goal is — to ascertain the circumstances about the fact of criminal act (if it is absent, criminal prosecution has no sense). After this, there is the second goal -to ascertain the person, who committed crime. That way, in such a case the following fact is emphasized: criminal prosecution does always address a recipient (to prosecute means to follow, to go after someone's steps). Since the moment when the involvement of a person or a group of persons would be proved with a certain degree of probability, the criminal prosecution becomes a specific character, expressed in the expansion of subject and limits of proving (the guilt of the person, its characteristics, age and health conditions, mitigating and aggravating factors and others), raising and justification of suspicion, possible application of measures according to involved persons, and manhunt if necessarily). At the next stage, if the in the information about crime committed by a certain person is proved, the "legalizing of criminal prosecution" occurs, and it is being expressed in a judicial evaluation, formulation and If indicting. If the reasons are available, criminal prosecution is stopped and the absence of the reasons for indicting is being stated[88].

Criminal prosecution (indictment as well) determines the procedural status of the process' parties, the degree of possibly state coercion, elements of publicity and dispositivity. The indictment's function is considered to be as procedural activity of authorized bodies, aimed at incrimination of a person at committing a crime in order to assure to judge a guilty person and to apply a fair punishment[89].

The concept of prosecution, fixed in part 22 Article 5 Criminal Code of Russian Federation is considered as a statement about an act, committed by a certain person and forbidden by Criminal Code and being demanded by Criminal Code of Russian Federation. That way, prosecution is considered as a procedural decision with followed prosecution.

In this meaning the prosecution has a) a volume, those are describing of actual circumstances of a crime, with mentioned time and place, and also other actual circumstances, necessary according to Article 73 Criminal Code of Russian Federation: means, reasons, goals, consequences of crimes and other circumstances, which matter for this criminal case (part 3 paragraph 3 Article 38, part 4 paragraph 2 Article 173 and part 3 paragraph 1 Article 220); b) criminally-legal formulation of the indictment, with mentioning of the part, paragraph and article of Criminal Code, which prescribe the liability for this crime

---

86 Mazyuk, R.V. The Institution of Criminal Prosecution in the System of Russian Criminal Procedure Institutions //Siberian Law Herald. 2012. №2(57). P.141.

87 Foinitskiy, I. Ya. Criminal Procedure Course // ed. by A.V.Smirnova. SPb.: Alfa. 1996. Part 2. P. 3.

88 Endoltseva, A. V. Exemption from Prosecution: From a Theoretical Discourse to De Lege Ferenda // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. 2016. №6. Pp. 56–58.

89 Strogowitch M.S. Course of Criminal Procedure. M., 1968. P. 190. Elkind P.S. The Entity of Soviet Legal-Proceeding Law. M., 1963. P. 60.

(part 4 paragraph 1 Article 220). In the law there is also a concept "charge point" (part 2 Article 220), taking its beginning from seven charge points (points of indictment) in Roman law, which is equal to the concept "charge volume"(part 1 paragraph 2 Article 221).

The division of criminal prosecution into stages, forms and kinds helps to detect the main features of this kind of state activity and create a theoretical basis for the further solution of problems, emerged while criminal prosecution at different stages of criminal proceeding.

According to C.I. Victorsky, three stages of criminal proceeding are highlighted: 1) initiation of criminal prosecution, 2) preliminary investigation, 3) exposing the guilty in the court[90].

M.S. Strogonowitch highlights similar stages of criminal prosecution: 1) initiation of criminal prosecution, 2) criminal prosecution at the stage of preliminary investigation, 3) criminal prosecution in the court[91].

In this case, when assessing criteria for dividing criminal prosecution into stages, we apply the criterion for staging of criminal proceedings in accordance with criminal pursuit. However, at the same stage the form of realization of criminal prosecution can differ significantly.

In other case, equal volume of prosecution can pass the stage consistently.

That is why beside this criteria the form of criminal prosecution should be used, which depends not on stages and in which frames they are being realized, but on volume and stage of the concreteness of proofs, which are expressed in different procedural acts certain procedural actions[92]. So, M.P. Kan offers three forms of criminal prosecution: 1) criminal prosecution in form of suspicion; 2) criminal prosecution in form of indictment; 3) criminal prosecution in form of preceding of a case about application of compulsory measure of medical ground[93].

In judicial literature, the question about content of activity for implementation of criminal prosecution and resulting law relationship is being widely discussed and this dispute remains controversial until now. So, according to goal setting of this kind of activity and understanding of entity considered law category, the following law measures of have to be included in content of institute of criminal prosecution, which regulate: 1) initiation of criminal prosecution (initiation of criminal case against a certain person, notification of suspicion, procedural arrest by suspicion of committing a crime, involvement of a person as an accused, making an indictment and indicting; 2) proving of participation of an suspect to committing a crime ascertaining the reasons of accusing a person for committing a crime; 3) proving guilt of a defendant in committing crime; 4) manhunt of a hidden suspect and accused; 5)application to the suspect and accused measures of criminal procedural coercion, including preventive measure; 6) endorsement of the indictment by a prosecutor and referral the case in the court; 7) maintaining the prosecution in court by a state prosecutor or by a private person on private prosecution cases; 8) termination of criminal prosecution (in pre-trial and judicial proceedings).

The unsubstantiated extension of this field of activity, realized by some lawyer, complicates the final definition of concepts ant contents of institute of criminal prosecution in the theory of criminal proceeding and in criminal-proceeding law, as well as certain issues of law application[94].

In our opinion, the following means don't have to be included in procedural means: appeal of a verdict by parties from the prosecution in the cassation order on the basis of inconsistency of court's conclusions to actual circumstances of a case (R.V. Masyk); the jurisdiction of the criminal case, the termination of criminal proceeding, the regime of serving a sentence (Z.D. Enikeev[95]); conclusion of pre-trial agreement about cooperation between suspect, accused and prosecutor (V.F. Krukov). However, the most lawyers don't include the manhunt of a hidden suspect and accused in content of criminal case.

It has to be mentioned, that beside such element of institute of criminal prosecution as activity, an important characteristic is the character of law relationship in this dynamically developed activity as well as their interrelation with other institutes of criminal-procedural law. At the same time such signs of law relationship have to be used as object and subject of law relationship, their procedural power and procedural status.

So, criminal prosecution is one of the most common institutes of criminal law, which regulate the activity of authorized persons, which goal is to ascertain the fact of existence of criminal-law conflict and its solution according to fixed procedural function, expressed in legal reasonable formulating of indictment according to a certain person (or group of persons), or approval the fact of absence of reasons for criminal liability (solution of a criminal-law conflict). The results of solution of a criminal-law conflict can also be another law mechanism as an alternative for criminal prosecution.

---

90 Viktorsky, S. I. Russian Criminal Procedure. M., 1997. Pp. 235–242.

91 Strogovitch M.S. Criminal Prosecution in Soviet Criminal Proceeding/ ed. By M.M. Grodzinsky. M.: AN USSR Publishing House, 1951. P. 56.

92 Zhuk O.D. Disputes about Forms and Kinds of Criminal Prosecution. // "Black Holes" in Russian Legislation. 2004. №2. P.334.

93 Kan M.P. The Function of Criminal Prosecution and Power of Prosecutor // Abstracts from reports at the theoretical conference of postgraduates of Institute of State and Law AN USSR and Judicial Faculty of M.V. Lomonosov Moscow State University. M.: AN USSR. 1986. Pp. 144–145.

94 Currently Problems of Criminal Proceeding: Ways of Solution. Materials of International Scientific Conference. Ufa, September, 24th, 2020./ed. A.U. Tereckova. Ufa: JU MIA of Russia. 2020.

95 Enikeev Z.D. Mechanism of Criminal Prosecution. Ufa. 2002.

References

1. Baev, O. Ya. Criminal Procedural Investigation of Crimes: System and Quality [Ugolovno-protsessual'noe issledovanie prestuplenii: sistema i kachestvo]. M. : Yurlitinform, 2007.
2. Dikarev I. S. The Prosecution: Clarification of the Notion [Ugolovnoe presledovanie: utochnenie ponyatiya] // Russian Justice [Rossiiskaya yustitsiya]. 2013. No.9. P. 23–25.
3. Endoltseva, A. V. Exemption from Prosecution: From a Theoretical Discourse to De Lege Ferenda [Osvobozhdenie ot ugolovnogo presledovaniya: ot teoreticheskikh rassuzhdenii k de lege ferenda] // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia [Vestnik Moskovskogo universiteta MVD Rossii]. 2016. No.6. P. 56–58.
4. Enikeev, Z. D. The Mechanism of Criminal Prosecution [Mekhanizm ugolovnogo presledovaniya]. Ufa, 2002.
5. Foinitskiy, I. Ya. Criminal Procedure Course [Kurs ugolovnogo sudoproizvodstva] / ed. A. V. Smirnova. SPb. : Alpha, 1996.
6. Khatuaeva, V. V. Criminal Prosecution : a Textbook for Universities [Ugolovnoe presledovanie : uch. posobie dlya vuzov]. M. : Yurayt Publishing House, 2021.
7. Mazyuk, R. V. The Institution of Criminal Prosecution in the System of Russian Criminal Procedure Institutions [Institut ugolovnogo presledovaniya v sisteme institutov rossiiskogo ugolovnogo sudoproizvodstva] // Siberian Law Herald [Sibirskii yuridicheskii vestnik], 2012. No.2 (57). P. 141–145.
8. Modern Problems of Criminal Procedure: solutions : Collection of Materials of the International Scientific and Practical Conference. Ufa, September 24, 2020 [Sovremennye problemy ugolovnogo protsessa: puti resheniya : sbornik materialov Mezhdunarodnoi nauchno-prakticheskoi konferentsii. Ufa, 24 sentyabrya 2020 g.] / under total. ed. A. Yu. Terekhova. Ufa : Ufa Law Institute of the Ministry of Internal Affairs of Russia [Ufimskii YUI MVD Rossii], 2020.
9. Talalaev, K. A. Criminal Prosecution: The Problems of Definition [Ugolovnoe presledovanie: problemy opredeleniya] // Legal Bulletin of Samara University [Yuridicheskii vestnik Samarskogo universiteta]. 2020. V. 6. No.4. P. 142–145.
10. Umarova, A. A. Institute of Legal Restrictions: General Theoretical Research [Institut pravovykh ogranichenii: obshcheteoreticheskoe issledovanie] : Abstract Dis. ... Candidate of Legal Sciences: 12.00.01. Kursk, 2018.
11. Viktorsky, S. I. Russian Criminal Procedure [Russkii ugolovnyi protsess]. M., 1997.
12. Volodina, L. M. Actual Problems of Criminal Proceedings [Aktual'nye problemy ugolovnogo sudoproizvodstva]. M. : Jurlitinform, 2020.
13. Zhuk, O. D. On the Question of the Forms and Types of Criminal Prosecution [K voprosu o formakh i vidakh ugolovnogo presledovaniya] // "Black holes" in Russian Legislation [«Chernye dyrY» v rossiiskom zakonodatel'stve]. 2004. No.2. P. 334–339.

The Issue of International Legal Regulation of the Exploiting Natural Resources in Outer Spaceon the Basis of International Law

Rukhshona Sh. Radzhabova
Student Russian Customs Academy the Saint Petersburg Branch Named after V. Bobkov, Saint Petersburg, Russian Federation; ruradzh@gmail.com

ABSTRACT
The article analyzes the problem of international legal regulation of the exploiting natural resources in outer space. Special attention is paid to innovative proposals to amend current legislation offered by ague Space Resources Governance Working Group and Space Generation Advisory Council. The need to establish a distinction between the legal regimes of celestial bodies and resources of outer space is emphasized. Arising from the research, a conclusion about the need to update the existing rules of international space law and concretize the concepts such as celestial bodies, space resources, common heritage of mankind and use of outer space is formulated.
Keywords: mining resources in space, celestial bodies, asteroids mining, common heritage of mankind, ownership, commercialization of the space industry, national assignment ownership

As a result of the progressive development of technologies, the prospect of commercial activity in space has turned into a practical plane, transforming the space industry into a profitable area for investment. Compared to 1999, in 2005, the average annual revenue of the global space market increased by 93.3%, in absolute terms, the growth amounted to 168.2 billion US dollars (USD)[96] due to the fact that private companies actively provided services in various areas of the space industry and developed their own commercial projects.

In this connection, over the past decade, the idea of mining on celestial bodies has begun to take the form of national acts of individual States and specific private sector projects. However, what is the main motive for commercial exploration of space resources and global space projects in general?

Firstly, the economic benefits of such activities are obvious, and analysts predict that mining in space can turn into a multibillion-dollar industry. The idea of mining resources on asteroids — asteroid mining — is one of the latest trends in space exploration. Unlike Earth, where heavy metals are concentrated closer to the core, metals on asteroids are dispersed throughout the object[97], which directly facilitates the process of resource extraction.

Moreover, in total, the amount of resources contained in near-Earth asteroids is significantly higher than the average in the Earth's crust, which makes asteroids one of the main candidates in the mining space industry. According to NASA experts, the cost of asteroids can be about 700 quintln US dollars — this amount is approximately equivalent to 95 billion US dollars for each tellurian[98].

Secondly, easily accessible reserves of metals, mineral resources and rare earth elements on Earth are being reduced and depleted. Anticipating the coming crisis of depletion of natural resources, commercial companies offer to expand production beyond the Earth, that is, to extract resources in outer space. It should be noted that classes of celestial bodies are usually divided into three main groups: the C-group contains hydrated minerals (water); the S-group is the basis of the composition — silicates and aluminum; the X-group is rich in metals. It is assumed that the potential targets for the development will be as close to Earth asteroids, which, according to estimates by the Center for the near-earth objects studies (CNEOS) at NASA, at the beginning of 2017 was 17 272[99].

Thirdly, studies show that a class C asteroids contain a large amount of water is a valuable resource to produce rocket fuel, because water can be extracted and subjected to electrolysis to produce hydrogen and oxygen — the key ingredients used in rocket engines.

---

96 General trends in the development of space activities [Electronic resource] // Baiterek: information resource. Url: http://bayterek.kz/info/space_activities.php (date of access: 06.01.2021).

97 Mineral resources in space [Electronic resource] // Gold mining: scientific information resource. URL: https://zolotodb.ru/article/10880 (date of access: 06.01.2021).

98 Bank of America report: 700 quintillion dollars from space [Electronic resource] // Habr: information resource. Url: https://habr.com/ru/company/edison/blog/438184/ (date of access: 06.01.2021).

99 Extraction of minerals outside the Earth: will the gold rush begin in space [Electronic resource] // Elements: scientific and journalistic resource. URL: https://elementy.ru/nauchno-populyarnaya_biblioteka/434283/Dostat_zvezdu (date of access: 06.01.2021).

This field can be used as a refueling station, which will significantly reduce fuel costs and launches, as well as reduce the cost of space missions.

Against the background of actively developing projects aimed at extracting resources in space, the question of the legitimacy of such activities is of particular importance. On the one hand, the increasing intentions of States and commercial companies to extract minerals valuable for industry from the bowels of celestial bodies run counter to the established international regime. Since the established principle of "non-appropriation" in the fundamental international act — the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1967 (hereinafter referred to as the Outer Space Treaty) prohibits States from appropriating, occupying and proclaiming sovereignty over outer space, the Moon and celestial bodies[100]. On the other hand, this restriction allows us to believe that the extraction and subsequent appropriation of resources do not violate this principle, since article II of the Outer Space Treaty considers only outer space, the Moon and celestial bodies, but not the minerals contained in them, which has already been used in a number of countries when developing relevant national laws.

In view of this, the most significant are the adopted legislative acts of the USA, Luxembourg and the UAE, which only actualized the discussion about the validity of such actions.

Of particular interest is the US Commercial Space Launch Competitiveness Actof 2015. It is aimed at developing commercial research and the use of space resources to meet national needs. In particular, chap. IV "Space Resource Exploration and Utilization" contains a provision according to which a US citizen engaged in the commercial acquisition of asteroid resources or space resources is entitled to any asteroid resource or acquired space resource, including the right to possess, own, move, use and sell asteroid resources or space resources extracted in accordance with applicable law, including US international obligations[101].

On April 6, 2020, the Executive Order of the US President "Encouraging International Support for the Recovery and Use of Space Resources" was signed. The order grants U.S. citizens the right to conduct commercial exploration, extraction and exploitation of resources in space in accordance with "applicable law"[102]. The listed legislative acts allow us to believe that the United States unilaterally introduced the right of private ownership of the extracted resources from the bowels of space bodies.

The law on the Exploration and Use of Luxembourg's space Resources — the "Space Law"[103] of July 20, 2017 — unlike the provisions of US acts regulating only the activities of its own citizens, it is established that any foreign company with a representative office in the duchy has the right to participate in the development of resource extraction.

Luxembourg's mission in this regard is to issue a license and then monitor the company's activities.

Following Luxembourg, the United Arab Emirates (hereinafter referred to as the UAE) has formed its own approaches in two key areas of space exploration: exploration and commercialization of space resources. In 2019, the UAE Space Agency took steps to regulate the space sector based on its own legislative framework in order to allow private companies to retain full ownership of the extracted resources. The head of the agency, Mohammed al-Akhbabi, said: This is the same principle as going out into the ocean and disposing of the fish you catch. If you don't own a fish, then why go to the sea?"[104] At the moment, the UAE has adopted Federal Law No.12 on the regulation of the space sector. Article 14 of the Law mentions a ban on the possession of a space object and the implementation of space activities without the appropriate permission from the Agency[105].

The above facts lead to the following set of questions. Is the State authorized to issue permits to individuals and legal entities to extract resources without having ownership rights in respect of these resources and their territories? Who will own the extracted resources? Do private companies have the opportunity to acquire ownership or other property rights to a celestial body or its resources?

For a more detailed consideration of these aspects, it is necessary to consider the status of outer space and celestial bodies.

---

100 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. Article II [Electronic resource] // UN website. URL: https://www.un.org/ru/documents/decl_conv/conventions/outer_space_governing.shtml (date of access: 20.01.2021).

101 U.S. Commercial Space Launch Competitiveness Act. Title IV. Sec. 51303. P. 129 STAT. 722 [Electronic resource] // USA Congress website. URL: https://www.congress.gov/bill/114th-congress/house-bill/2262 (date date of access: 20.01.2021).

102 Insight — Encouraging the Recovery and Use of Space Resources: Recommendations for Governmental Policies and Engagement [Electronic resource]. URL: https://swfound.org/news/all-news/2020/10/insight-encouraging-the-recovery-and-use-of-spaceresources-recommendations-for-governmental-policies-and-engagement (date date of access: 01/21/2021).

103 Law of 20 July 2017 on the Exploration and Use of Space Resources (Loi du 20 juillet 2017 sur l'exploration et l'utilization des resources de l'espace) // Official Gazette of the Grand Duchy of Luxembourg, No.674 (July 8, 2017), Legilux.

104 UAE Looks to Regulate Asteroid Mining As It Aims to Lure Private Space Sector [Electronic resource] // The National. URL: https://www.thenationalnews.com/uae/science/uae-looks-to-regulate-asteroid-mining-as-it-aims-to-lure-private-space-sector-1.943028 (date of access: 20.01.2021).

105 Federal Law No.12. Chapter 3. Article 14. Issued on 12/19/2019. Corresponding to 22 Rabi 'Al-Akhar 1441H. On the Regulation of the Space Sector [Electronic resource] // Offi cial Gazette, issue No.669. Url: https://www.lexmena.com/lawdiff/en_fed~2019–12–19_00012_2020–02–13%5Een_fed~2019–12–19_00012_2020–02–22/ (date of access: 20.01.2021).

During the development of international space law, the question of the legal status of space and its resources was raised: is outer space res communis[106] or terra nullius[107]? Since the adoption of the Outer Space Treaty of 1967, the doctrine of res communis has prevailed — the concept according to which the sovereignty of no State can extend to the space that is in common use of all peoples. Perhaps a striking example of the concept of terra nullius is the territory of Western Sahara, which was claimed by Morocco and Mauritania after its decolonization by Spain. In 1975 The International Court of Justice of the United Nations ruled that during the Spanish colonization, which began in 1884, Western Sahara was not a territory belonging to one of the two States, even though the territory has a legal connection with Morocco and Mauritania, these ties are not of such a nature that could affect the application of the General Assembly resolution on the decolonization of this territory[108]. That is, through Spain's renunciation of the territory, the status of Western Sahara qualifies as terra nullius. In relation to outer space, the application of this concept is untenable, since outer space has not been and is not subject to anyone's sovereignty and jurisdiction, and the prohibition on establishing sovereignty has been approved by treaty. Here it is appropriate to agree with G. G. Shinkaretskaya that the status of outer space is a special kind of sui generis status: therefore, this space is subject to the unified jurisdiction of all States[109]. Which confirms art . II of the Outer Space Treaty, which assigns outer space as a territory outside the jurisdiction of any State, and no State can exercise any sovereign rights over outer space, the Moon and celestial bodies.

We could do worse than heed to the extremely interesting position of the United States in the previously mentioned Executive Order: "Outerspaceis a legally and physically unique main of human activity, and the United States does not view it as a global commons"[110], which literally means the intention of the United States not to consider space as the common heritage of mankind. According to the provisions of Article I of the Outer Space Treaty, outer space, as well as celestial bodies, cannot belong to a single State, and their use and exploration is the property of all mankind[111]. At the same time, the mentioned US laws declare commitment to the current legal regulation. It follows that by allowing commercial production, the United States violates the same provision to which they refer. Along with this, it should be noted that Article I of the Outer Space Treaty does not qualify outer space as the property of all mankind,

but considers its use and exploration to be a common property. In other words, the result obtained through the use and exploration of outer space is the property of all mankind. However, there is no clarity as to what is meant by "use" and whether this concept includes the extraction of resources in accordance with current legislation.

Analyzing the provisions of Article I of the Outer Space Treaty, some Western experts come to the conclusion[112] that the concept of "use" is similar in meaning to the concept of "exploitation". They argue this point of view by the fact that in the legal sense, the word "use" means the use of property in order to make a profit as a result of the exploitation of this property. However, the Moon and other celestial bodies cannot be attributed to immovable property and transferred to ownership — these are objects that cannot fall into the sphere of civil circulation at all (it is hardly appropriate to talk about withdrawal from civil circulation here)[113]. A special international legal regime established by States applies to outer space, as well as celestial bodies and their resources.

In addition to the Outer Space Treaty, such issues are regulated in the 1979 Moon Agreement, where article 11, paragraph 1, explicitly states that the Moon and its natural resources are the common heritage of mankind. Moreover, in the same Article 11, paragraph 3 contains a clear prohibition on the ownership of the surface and bowels of the Moon, its sites and natural resources[114]. Thus, it can be said with sufficient certainty that the provisions of article 11 of the Moon Agreement could be used in understanding the provisions of the Outer Space Treaty. However, as of April 8, 2020only thirteen states have signed and ratified the treaty, they do not include such major space powers as Russia and the United States. In this regard,

---

106 Everybody's territory.

107 Nobody's territory.

108 Mark, A. A. Smith, Jr. Sovereignty Over Unoccupied Territories — the Western Sahara Decision, 9 Case W. Res. J. Int'l L. 135 [Electronic resource] // Case Western Reserve Journal of International Law. 1977. URL: https://scholarlycommons.law.case.edu/jil/vol9/iss1/8 (accessed date: 20.01.2021).

109 See: Shinkaretskaia, G. G. International Space Law and Juridical Persons // Proceedings of the Institute of State and Law of the RAS. 2019.Vol. 15.No.1.P. 59–80.

110 Insight — Encouraging the Recovery and Use of Space Resources: Recommendations for Governmental Policies and Engagement [Electronic resource]. URL: https://swfound.org/news/all-news/2020/10/insight-encouraging-the-recovery-and-use-of-spaceresources-recommendations-for-governmental-policies-and-engagement (date of access: 20.01.2021).

111 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies. Article I [Electronic resource] // UN website. URL: https://www.un.org/ru/documents/decl_conv/conventions/outer_space_governing.shtml (date of access: 20.01.2021).

112 See: Su J. Legality of Unilateral Exploitation of Space Resources under International Law. [Electronic resource] // International and Comparative Law Quarterly, 66 (4), 991–1008. 2017. doi: 10.1017/S0020589317000367. URL: https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/abs/legality-of-unilateral-exploitation-of-space-resources-under-international-law/EE17641F7B7C6404A79B77AEB627D5F4 (date of access: 19.03.2021).

113 Verbitskaya Yu. O. Space objects as objects of civil turnover // Objects of civil turnover: a collection of articles/ Executive editor M.A. Rozhkova. M.: Statut, 2007.P. 466.

114 Agreement on the Activities of States on the Moon and Other Celestial Bodies, adopted by General Assam resolution 34/68 UN bleys of December 5, 1979, entered into force on July 11, 1984 [Electronic resource] // UN website. URL: https://www.un.org/ru/documents/decl_conv/conventions/moon_agreement.shtml (date of access: 20.01.2021).

in 2018, at the 57th session of the UN Space Committee, the opinion was expressed that there is no uniform understanding of the two principles according to which, firstly, the exploration and use of outer space are the property of all mankind, as defined in the Outer Space Treaty, and, secondly, the Moon and its natural resources are the common heritage of mankind, as defined in the Moon Agreement[115]. According to the delegation that expressed this view, these concepts require in-depth discussion in the Legal Subcommittee to ensure their uniform interpretation.

It should be noted that since 2017, the UN Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee have officially included the item "General Exchange of Views on possible models of legal regulation of activities for the exploration, development and use of space resources" in the official agenda. However, in comparison with the specialized agencies of the United Nations, the Hague International Working Group on Space Resources Management managed to take the most in-depth look at the current situation in space activities and develop its own regulatory model on this basis. The organization, which includes representatives of governments, industry, space agencies and scientists from around the world, was established in 2016 with the support of the Dutch Foreign Ministry. The main activity of the working group is based on the identification and development of "building blocks" — elements representing potential solutions to the future regime of regulation of space activities. On November 12, 2019, the Working Group published the final text of the Main Provisions for the Development of a Legal Regime for Mining Activities in Space (Building Blocks for the Development of an International Frame work on Space Resource Activities). As indicated in the preamble, the document does not regulate the detailed activities of States, but fixes the general principles of the future regulation of space activities, which will take into account the principle of "adaptive management" — gradual management as scientific and technological progress[116].

The main provisions of the document that are worth paying attention to:

- A rule is introduced on holding an international consultation before starting potential activities in outer space with reference to Article IX of the 1967 Outer Space Treaty, if there are grounds to believe that such activities are harmful (Article 4);
- States are responsible for non-governmental organizations engaged in mining activities; if the activity is carried out by an international organization, both the organization itself and the participating States are responsible (Article 5);
- States exercise jurisdiction and control over extracted resources (Article 6);
- Resource rights in respect of raw minerals and volatile materials extracted from space resources, as well as products derived from them, can be legally acquired through domestic legislation, bilateral agreements and/or multilateral agreements (Article 8);
- Resolution of potential disputes related to mining activities should be carried out through judicial, non-judicial or mixed mechanisms in accordance with the Optional Arbitration Rules of the Permanent Court of Arbitration for the Settlement of Disputes Related to Activities in Outer Space, dated December 6, 2011 (Article 9).

Of particular interest in the context of the proposed document is the regulation of the position of legal entities. The proposed principle is similar to the norms prescribed in the 1982 UN Convention on the Law of the Sea. An example is the following case. May 6, 2010 The International Seabed Authority has appealed to the Chamber of Disputes to issue an advisory opinion on the obligations[117] and duties of States that have vouched for individuals and legal entities in the Area. A "region" is a zone established by the UN Convention on the Law of the Sea, which represents the bottom of the seas and oceans and its subsoil beyond the limits of national jurisdiction. Such a zone and its resources are declared the common heritage of mankind. On February 1, 2011, the following decision was made. First, States have a direct obligation, for example, the obligation to apply the precautionary principle. According to the conclusion, non-compliance by legal entities and individuals with their obligations does not give rise to the responsibility of the sponsoring State. It arises only if a State fails to comply with its obligations under the Convention and thereby causes damage. That is, it is necessary to establish a causal relationship between non-fulfillment of obligations and damage. Secondly, the Convention requires the sponsoring State to adopt, within the framework of its national legislation, rules and administrative measures that are designed to ensure that legal entities and individuals comply with their obligations and release the sponsoring State from responsibility. Thus, the responsibility for the activities of legal entities and individuals should be borne by the State. This provision is also confirmed in article VI of the Outer Space Treaty: "The activities of non-governmental legal entities in outer space, including the Moon and other celestial bodies, must be carried out with the permission and under the constant supervision of the relevant State party to the Treaty"[118].

---

115 Report of the Legal Subcommittee on Its Fifty-Seventh Session, Held in Vienna from 9 to 20 April 2018. IV. Status and Application of the Five United Nations Treaties on Outer Space [Electronic resource] // United Nations A/AC.105/1177. P. 11–13. URL: https://www.unoosa.org/oosa/oosadoc/data/documents/2018/aac.105/aac.1051177_0.html (date of access: 19.03.01.2021).

116 See: Popova, S. M. The Hague Model of Legal Regulation of Activities in the Field of Space Resources and Prospects for the Transformation of International Space Law // Space Research. 2018. No.2. P. 144–158.

117 Abashidze, A. S., Solntsev, A. M., Syunyaeva, M. D. Advisory Opinion of the International Tribunal for the Law of the Sea on the Responsibility of States for Activities on the Seabed Beyond the Limits of National Jurisdiction // State and Law. 2012. No.7. P. 72–81.

118 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. Article VI [Electronic resource] // UN website. URL: https://www.un.org/ru/documents/decl_conv/conventions/outer_space_governing.shtml (date of access: 20.01.2021).

The provision of clause 11.3, which directly concerns the creation of "safety zones", is of interest. Considering the principle of non-appropriation, according to article II of the Outer Space Treaty, States and international organizations have the right to establish security zones in the area designated for the extraction of space resources, as this is necessary to limit harmful effects and prevent interference. A State or an international organization may restrict access for a certain period if there is a notification sent stating the reasons for such a restriction. However, it is indicated that the creation of "safety zones" should not prevent free access in accordance with international law to any area of outer space for personnel, vehicles and equipment of another operator. It is noteworthy that the Main Provision of the working group contains its own terminology, in which the "operator" is a State, international or non-governmental organization engaged in activities in the field of space resources. There is not enough concretization here, since only a State is a subject of international space law, while international and non-governmental organizations are not.

Moreover, the concept of "space resource" is also defined. The document contains the wording: a space resource is a recoverable and/or recoverable abiotic resource in outer space. According to the working group's understanding, this includes mineral and volatile materials, including water, but excludes: (a) satellite orbits, (b) radio-electronic spectrum and (c) solar energy, except when it is collected from unique and rare places. In this regard, it should be noted that there is no more detailed qualification for natural resources, which can be: inexhaustible, exhaustible, renewable, non-renewable. For example, at the EPSC Planetary Science conference in Riga in 2017, a group of thirty astronomers announced the possibility of mining only after specialists begin to understand the behavior of small celestial bodies through a comprehensive study, as a result of which they will compile a list of relatively slow objects where probes can reach[119].

It is necessary to specify the legal definition of a celestial body. According to S. P. Malkov, when defining the legal concept, it is necessary to distinguish between celestial bodies and natural resources of space and introduce separate legal regimes for these objects. It seems that the legal regime of celestial bodies is inseparable from the legal regime of the resources of celestial bodies. In turn, a different regime will apply to the natural resources of outer space. Thus, the highlighted definition of the legal concept of a celestial body will not include small asteroids that do not have sufficient gravity, small satellites of planets, as well as meteor bodies, comets, which must be attributed to the natural resources of outer space[120].

At the 57th session of the UN Space Committee, the opinion was expressed that the format of the work of this working group is of concern, since the fundamental principles of interest to all States were discussed by a limited group of individuals. It was pointed out that the wording in the preliminary draft submitted by the group in 2017 was similar to certain provisions of recent national acts on the extraction of space resources. The Delegation further noted that the working group had not considered the practice-oriented results of the work of the Scientific and Technical Subcommittee (for example, on the topic of ensuring long-term sustainability of activities). The inspirers and participants of the Hague Working Group should consider the existing criticism of it, so as not to repeat the example of the 1979 Moon Agreement mentioned earlier, which is so actively ignored by the group itself[121].

It is important to note that Greece and Belgium proposed the creation of a working group to develop alternative legal solutions necessary to ensure the legal certainty of the development of space resources at the 58th session of the Legal Subcommittee of the UN Committee on Outer Space in 2019. Belgium presented a preliminary list of issues indicating the need to define terms and the application of general principles of space exploration; institutional framework for resource management, etc[122]. Separately, at the initiative of the States, attention is focused on the already existing Agreement on the Moon. The principles formulated in paragraph 7 of Article 11 of the Agreement, in the opinion of the delegation, are fundamental, regardless of opinions on the ratification of this Agreement. Judging by the analysis of the draft report of the 58th session of the legal subcommittee, the subcommittee has scheduled informal consultations with the aim of a broad exchange of views and discussion on the establishment of a working group proposed by Belgium and Greece. Thus, the creation of a separate group on the development of space resources in the foreseeable future seems quite possible. It is necessary to discuss such issues precisely at the level of the legal subcommittee in order to consider the opinion of all parties.

Along with the approaches proposed by the Hague Working Group, it is necessary to note the proposals of the Space Generation Advisory Council (hereinafter referred to as SGAC). This non-governmental organization also considers it necessary to create an international regulatory framework regulating the extraction of resources in space. In a concentrated form, the proposals boil down to the following: the introduction of a fee for the lease of a site on an asteroid, a time limit on the lease and the creation of a space customs office, whose competence will include the inventory of materials returned to Earth[123]. To gain access to the "resource mine", the parties will be required to sign a lease agreement with an intermediary

---

119 Scientists told what interferes with the extraction of minerals on asteroids [Electronic resource] // RIA Novosti. September 20th. 2017. URL: https://ria.ru/20170920/1505147158.html (date of access: 19.03.2021).

120 Malkov, S. P. International Space Law: Training Manual. SPb.: SPbGUAP, 2002.P. 112.

121 Timokhin, K. V. The Hague Space Resources Governance Working Group as an Example of the General Approach to the Development of the International Space Law // Space Research. 2019. No.1. P. 45–55.

122 See: Alekseev, M. A. Prospects for the Coordination of the International Legal Regime of Natural Resources of Celestial Bodies // Space Research. 2019. No.1. P. 56–66.

123 See: Cheney Th. Space Resources At the UN [Electronic resource] // Thomas 'blog 2019.9 April. URL: https://thomascheneyblog.wordpress.com/2019/04/09/space-resources-at-the-un/ (date of access: 21.01.2021).

organization. SGAC notes the need to pay special attention to countries that do not have space technology, and that measures should be taken that will benefit them, such as assistance in financing their space programs or sharing resources obtained from space. The provisions proposed by the Council need to be defined and refined in more detail. For example, the article does not specify how resources will be shared with lagging countries.

Thus, the analysis of studies devoted to the development of the problem of legal regulation of the extraction of space resources allows us to draw the following conclusions.

Firstly, as it was noted earlier, outer space is under the joint jurisdiction of all States. Consequently, issues such as the legality of the extraction of space resources and property rights in relation to these resources should be resolved at the interstate level "on the basis of equality and in accordance with international law"[124]. In turn, the adopted legislative acts of the USA, Luxembourg and the UAE, to a certain extent interpret their own understanding of the rules of space exploration, which is due to the lack of a uniform interpretation of Article I and II of the Outer Space Treaty. The question of whether such unilateral initiatives of individual States are legitimate should be transformed into a separate item and included in the official agenda at the annual session of the UN Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee.

Secondly, even though most experts consider the national acts of the USA, Luxembourg and the UAE to violate the current legislation, the very fact of the emergence of such legal precedents[125] suggests the need to modernize existing norms of international space law. The legal regime of outer space bears a concrete historical imprint of that time, since during its development, the extraction of resources in space seemed a distant prospect. The ambiguous interpretation of the articles of the Outer Space Treaty, the lack of full and clear regulation of the space activities of private companies indicates an insufficiently stable legal system that is unable to withstand the challenges of the 21st century, such as the potential extraction of space resources, the commercialization of outer space and the increasing role of the private sector in space exploration. The first step in the process of modernization of the legal regime is the concretization in space law of concepts such as: a celestial body, space resources, the common heritage of mankind and the use of outer space. Next, it is necessary to develop a uniform concept of interpretation of Article I and II of the Outer Space Treaty, while considering the provisions of Article 11 of the Moon Agreement, which can be used in understanding the principle of "non-appropriation" in the designated articles.

Thirdly, the extraction of resources is impossible without the location of the subject on the surface of a celestial body, therefore, the creation of "security zones" should be limited in time and territory. Considering the SGAC's proposal for a paid lease of a site on a celestial body, states should discuss such a prospect of creating an international fund, the main financing of which will come from funds received from such a lease. The fund's work can be aimed at monitoring and supporting the environmental situation in outer space or at assisting States that are just beginning to develop their own space sector.

Fourth, in order to eliminate the legal uncertainty of resource extraction, it is necessary to establish certain criteria regarding the rules of resource extraction: 1) to distinguish the concepts of a celestial body and its resources and the resources of outer space; 2) to establish a requirement to extract the maximum permissible mass of resources from a celestial body from the total mass, thereby prohibiting mining on celestial bodies whose mass is below the minimum established; 3) to establish a rule for processing a certain part of resources on the spot so that the bulk of the resources remain inside the celestial body.

Thus, the extraction and exploitation of minerals in space is a progressive phenomenon that requires regulation. It is necessary to establish an international legal regime for the extraction of resources in space before the emergence of numerous international conflicts and disputes. In addition to the above proposals, it seems important to submit to the UN General Assembly a draft resolution on measures for transparency of space activities and expansion of cooperation. The ancient Roman saying "Quod omnes tangit ab omnibus Approbari debet" — "What concerns everyone must be approved by everyone" — acquires special significance in the context of this issue.

References

1. *Abashidze, A. S., Solntsev, A. M., Syunyaeva, M. D.* Advisory Opinion of the International Tribunal for the Law of the Sea on the Responsibility of States for Activities on the Seabed Beyond the Limits of National Jurisdiction [Konsultativnoe zaklyuchenie Mezhdunarodnogo tribunala po morskomy pravu ob otvetstvennosti gosudarstv za deyatelnost na morskom dne za predelami nacionalnoy jurisdikcii] // State and Law [Gosudarstvo i pravo]. 2012. No.7. P. 72–81. (in rus)
2. *Alekseev, M. A.* Prospects for the Coordination of the International Legal Regime of Natural Resources of Celestial Bodies [Perspektivi soglasovaniya mezhdunarodno-pravovogo rezhima prirodnikh resursov nebesnikh tel] // Space Research [Issledovaniya kosmosa]. 2019. No.1. P. 56–66. DOI: 10.7256/2453–8817.2019.1.30558. (in rus)
3. *Verbitskaya, Yu. O.* Space Objects As Objects of Civil Turnover [Kosmicheskie obiekti kak obiekti grazhdanskogo oborota] // Objects of Civil Turnover: Collection of Articles [Ob"ekty grazhdanskogo oborota: Sbornik statei] / otv. ed. M. A. Rozhkova. M. : Statut. 2007. P. 465–481. (in rus)

[124] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. Article I. [Electronic resource] // UN website. URL: https://www.un.org/ru/documents/decl_conv/conventions/outer_space_governing.shtml (date of access: 20.01.2021).

[125] See: Popova S.M. US Commercial Space Law 2015 and Modernization of International Space Law [Electronic resource] // Space Research. 2016. No.1. P. 51–65. URL: https://nbpublish.com/library_read_article.php?id=20590 (date of access: 21.01.2021).

4. *Malkov, S. P.* International Space Law : Training Manual [Mezhdunarodnoe kosmicheskoe parvo : uchebnoe posobie]. SPb. : SPbSUAI, 2002. P. 100–112. (in rus)
5. *Popova, S. M.* USA Commercial Space Law 2015 and the Modernization of International Space Law [Zakon SShA o kommercheskom kosmose i voprosi modernizacii mezhdunarodnogo kosmisheskogo prava] [Electronic resource] // Space Research [Issledovaniya kosmosa]. 2016. No.1. P. 51–65. URL: https://nbpublish.com/library_read_article.php?id=20590 (accessed date: 01.21.2021). DOI: 10.7256/2453–8817.2016.1.20590. (in rus)
6. *Popova, S. M.* The Hague Model of Legal Regulation of Activities in the Field of Space Resources and Prospects for the Transformation of International Space Law [Gaagskaya model pravovogo regulirovaniya deyatelnosti v oblasti kosmicheskikh resursov i perspektivi transformacii MKP] // Space Research [Issledovaniya kosmosa]. 2018. No.2. P. 144–158. DOI: 10.7256/2453–8817.2018.2.28631. (in rus)
7. *Timokhin, K. V.* The Hague Space Resources Governance Working Group as an Example of the General Approach to the Development of the International Space Law [Gaagskaya rabochaya gruppa po kosmicheskim resursam kak chastnoe proyavlenie obshchego podkhoda k razvitiyu kosmicheskogo prava] // Space Research [Issledovaniya kosmosa]. 2019. No.1. P. 45–55. DOI: 10.7256/2453–8817.2019.1.29227. (in rus)
8. *Shinkaretskaia, G. G.* International Space Law and Juridical Persons. Trudy Instituta gosudarstva i prava RAN [Mezhdunarodnoe kosmicheskoe pravo i yuridicheskie litsa] // Proceedings of the Institute of State and Law of the RAS [Trudy Instituta gosudarstva i prava RAN]. 2019. T. 15. No.1. P. 59–80. (in rus)
9. *Cheney, Th.* Space Resources at the UN [Electronic resource] // Thomas' blog 2019. 9 April. URL: https://thomascheneyblog.wordpress.com/2019/04/09/space-resources-at-the-un/ (accessed date: 21.01.2021).
10. *Mark, A. A. Smith, Jr.* Sovereignty Over Unoccupied Territories — the Western Sahara Decision, 9 Case W. Res. J. Int'l L. 135 [Electronic resource] // Case Western Reserve Journal of International Law. 1977. URL: https://scholarlycommons.law.case.edu/jil/vol9/iss1/8 (accessed date: 20.01.2021).
11. *Su, J.* Legality of Unilateral Exploitation of Space Resources under International Law [Electronic resource] // International and Comparative Law Quarterly, 66 (4), 991–1008. 2017. URL: https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/abs/legality-of-unilateral-exploitation-of-space-resources-under-international-law/EE17641F7B7C6404A79B77AEB627D5F4 (accessed date: 19.03.2021). DOI: 10.1017/S0020589317000367.

Problems of Legal Regulation of the Appearance of Ownership of the New Thing (Paragraph 1 of Article 218 of the Civil Code of the Russian Federation)[126]

Arina A. Merkureva
Student of the Master's Program of the Faculty of Law[127,128], North-West Institute of Management, Russian Presidential Academy of National Economy and Public Administration, Saint Petersburg, Russian Federation; arina_merkureva@mail.ru

ABSTRACT
The article examines the actual problem of legal regulation of the occurrence of ownership of the new thing (paragraph 1 of Article 218 of the Civil Code of the Russian Federation). The focus is on the characteristics of one of the two mandatory conditions of the occurrence of ownership of the new thing — the creation of a thing "for yourself", which today is the subject of discussions in the scientific environment. The study is conducted through the analysis of the application of this condition to acquire ownership of movable and immovable property. In addition, attention is drawn to the controversial issues of the doctrinal and judicial interpretation of the occurrence of ownership of the new thing, ways to improve legislation in this area are offered.
Keywords: the emergence of ownership, ownership of a new thing, creating a thing for themselves, real estate, creating a real estate object, acquisition, state registration

In paragraph 1 of Article 218 of the Russian Civil Code[129], it is established that the ownership right to a new thing created or manufactured by an individual for his own needs is acquired by him subject to compliance with all legal requirements.

For example, if a person has built a house, then based on the norm, he could become its owner in compliance with two mandatory conditions (circumstances): if the person built this real estate object for himself and did not violate any legislative and other legal regulations when creating it.

It is obvious that a person manifests the freedom of his own will by creating a new thing, but the law requires mandatory compliance with two conditions for acquiring ownership of a thing when creating it[130].

It seems that these conditions limit the individual's freedom when creating a new thing. Of course, compliance with legal norms is mandatory when implementing all the grounds for acquiring property rights, including when creating a new thing. For example, if a person independently makes counterfeit money or weapons, then he will not become the owner of these things, because such activity is prohibited by law. As for the mandatory condition concerning making things for yourself, some questions arise here.

I share the opinion of V.V. Bogdanov that this restrictive condition should be interpreted according to the circumstances[131]. So, it should not be interpreted literally, but it is subject to a broad interpretation.

Consider an example. If an individual has made a thing to satisfy his own needs, then this condition will not be violated (for example, a jeweler makes a gold jewelry for himself), this expresses the freedom of his will. But if a jeweler in the manufacture of a gold product initially decided that he would give it to his wife, then how in this case to interpret the possibility of acquiring ownership of a new thing, because the master immediately decided to create a thing not for himself, which means that he violated one of the mandatory conditions for acquiring ownership of a new thing, established in paragraph 1 of Article 218 of the Civil Code of the Russian Federation. In this case, not only the jeweler will not become the owner of the gold product at the end of the manufacturing process, but also his wife, who will later accept this thing as a gift and will use it.

---

126 The editors decided to publish this article as a discussion one, since the publishing policy of the journal is aimed at supporting the openness of expressing opinions. In this case, the opinion of the editorial board may not coincide with the opinion of the author.

127 Scientific adviser: Mayboroda Viktor Aleksandrovich, PhD in Jurisprudence, Associate Professor of the Department of Civil and Labor Law North-West Institute of Management, Russian Presidential Academy of National Economy and Public Administration, St. Petersburg, Russian Federation; victormaiboroda@yandex.ru

128 Scientific Adviser: Victor A. Maiboroda, PhD in Jurisprudence, Associate Professor, North-West Institute of Management, Russian Presidential Academy of National Economy and Public Administration, St. Petersburg, Russian Federation; victormaiboroda@yandex.ru

129 Civil Code of the Russian Federation (part 1) of November 30, 1994 No.51–FZ (as amended on July 31, 2020) // Collected Laws 1994. No.32. P. 3301.

130 Ruling of the Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation dated 04.21.2015 No.20–KG15–3 [Electronic resource] // Reference and legal system "ConsultantPlus". URL: http://www.supcourt.ru/stor_pdf.php?id=1320444 (date of access 28.03.2021).

131 Bogdanov, E. V. Legal Regulation the Emergence of Ownership of a New Thing /E.V. Bogdanov // Modern Law. 2020. No.3. P. 53–57.

It turns out that a jeweler does not have the right to give a gold jewelry that he did not make for himself. But then who will be the owner of a thing made not for their own needs? This question can be answered only with an extended interpretation of paragraph 1 of Article 218 of the Civil Code of the Russian Federation, i.e. it is necessary to take into account all the accompanying circumstances.

Many modern civilists support the possibility of an expansive interpretation of the condition in question.

For example, V. V. Gerbutov directly points out that paragraph 1 of Article 218 of the Civil Code of the Russian Federation is subject to an expansive interpretation[132].

According to A. A. Rubanov, it is advisable "in the broadest sense" to understand the indication in the law to manufacture a thing "for oneself"[133].

K. A. Novikov notes that the wording of paragraph 1 of Article 218 of the Civil Code of the Russian Federation is far from perfect, because the words "for themselves" prescribed in this norm cause the assumption that the owner, creating a new thing from the materials available to him by order of another person, does not acquire ownership of the created thing and it immediately after creation becomes the property of the customer. According to the scientist, the interpretation of paragraph 1 of Article 218 of the Civil Code of the Russian Federation is more correct, according to which if an individual makes a new thing from his materials by order of another person, i.e. if not for his own needs, then he becomes the original owner of the new thing himself, although later he has the right to agree with the customer about something else[134].

In my opinion, the presence in the Civil Code of the Russian Federation of a norm that allows for the possibility of an expansive interpretation and which can put the subject in a state of uncertainty does not improve the current civil legislation. In addition, such regulations become too subtle regulators of freedom and arbitrariness. After all, analyzing the above example, a jeweler does not become the owner of a thing on the basis of clause 1 of Article 218 of the Civil Code of the Russian Federation, because he did not make a thing for himself, but at the same time, with an extended interpretation of this norm, the jeweler made a gold jewelry for his own needs, in order to give it to his wife later, which means that formally he can be the owner of this thing.

And what if the situation becomes complicated by the fact that the jeweler decides to sell the manufactured gold product to another person? It turns out that he originally created it not for himself, but for sale. If a jeweler first makes a gold piece for himself, but then changes his mind and decides to sell it? How, in this case, will the ownership of the gold product arise? Will it be sold to the buyer without the right of ownership? With an extended interpretation of paragraph 1 of art . 218 of the Civil Code of the Russian Federation, a jeweler acquired ownership of a manufactured product as a new thing at the time of its creation, and all that remains for a jeweler to do, if he wants to systematically sell jewelry, is to register as an individual entrepreneur.

The issue of acquiring ownership of a new thing is also treated ambiguously if a person makes it from his own materials for subsequent transfer of it under a contract to other persons after the end of the manufacturing process. Here it is necessary to consider the fact that a person does not make a thing for his own needs from the very beginning, therefore, the right of ownership based on paragraph 1 of clause 1 of Article 218 of the Civil Code of the Russian Federation does not arise for it. However, if a contract has been concluded for the creation of a new thing, then the person performs production activities and here it is necessary to be guided by paragraph 2 of clause 1 of Article 218 of the Civil Code of the Russian Federation, where it is said that the manufacturer receives the right of ownership of products obtained as a result of the use of property based on Article 136 of the Civil Code of the Russian Federation. This norm stipulates that products created as a result of the use of a thing, regardless of who uses this thing, belong to the owner of the thing, unless otherwise established by law, contractual legal relations or does not follow from the substance of the relationship.

As a result, I see an incident that occurs when using clause 1 of Article 218 of the Civil Code of the Russian Federation and Article 136 of the Civil Code of the Russian Federation, indicating that the condition of creating a thing "for oneself" is superfluous in the norm under consideration.

A lot of questions arise when applying Part 1 of Article 218 of the Civil Code of the Russian Federation with respect to newly created real estate objects, and here the key problem concerns the establishment of a legally significant fact, namely the creation of a thing "for oneself", which determines the possibility of acquiring ownership of a new real estate object.

For the emergence of ownership of immovable property, it is necessary to have the fact of the creation of a real estate object as the basis for the acquisition of the right, as well as the state registration of this right in the Unified State Register of Immovable Property. In other words, it requires the emergence of several circumstances, each of which together forms a single legal basis for the emergence of property rights.

The current civil legislation does not disclose what exactly is meant by the creation of an immovable thing. If we refer to paragraph 1 of Article 218 of the Civil Code of the Russian Federation, then according to its meaning, ownership of a newly created real estate object can be acquired only if there are two mandatory conditions: firstly, a person must erect a real estate

---

132 Herbutov, V. S. Overview of the Dissertations on the Topic of Unjust Enrichment /V. S. Gerbutov // Bulletin of Civil Law. 2008. No.2. P. 77–80.

133 Commentary on the Civil Code of the Russian Federation, part 1/ed. T. E. Abova and A. Yu. Kabalkina. M.: Yurayt, 2011. 872 p.

134 Novikov, K. A. Extension of Pledge on the Substitute Assets: on One Rule of Article 345 of the Civil Code of Russia /K. A. Novikov // Herald of Economic Justice. 2017. No.1. P. 82–102.

object for their own needs, and secondly, the entire construction process must comply with current legal regulations in this area. Based on this, the absence of at least one of the above conditions does not allow the right of ownership to immovable property to arise.

According to the criteria discussed above, it can be assumed that the person who created it can register a newly created object of immovable property only if he has all the necessary documents confirming not only the legality of the construction of the object, but also that the person built this property for himself. But if we turn to Articles 14, 18 and 40 of the Federal Law "On State Registration of Real Estate"[135], they do not indicate the mandatory provision of a document stating that a person erected a newly created real estate object "for himself". In addition, in the Civil Code of the Russian Federation there are also no separate mentions of any document confirming the construction of a real estate object for their own needs.

Modern doctrine is critical of the possibility of applying the criterion "for oneself" when creating a new immovable thing.

According to R. S. Bevzenko, Part 10 of Article 40 of the Federal Law "On State Registration of Real Estate" is directed against considering the criterion "for oneself" when creating real estate, because in such a situation, the emergence of ownership rights begins to depend on the facts and mutual obligations that are difficult to establish by third parties[136].

Judicial practice often contradicts scientific views on this issue. For example, the Supreme Court of the Russian Federation, considering various disputes on the recognition of ownership of immovable property, quite clearly expresses its legal position: "The provision established in Part 1 of Article 218 of the Civil Code of the Russian Federation, as conditions for the emergence of ownership of a newly created thing, calls two legally significant circumstances: the creation of a new thing for itself and the absence of violations of the law when it was created"[137].

However, in law enforcement practice it is quite difficult to find any clear instructions on how to determine the criterion for creating a thing "for yourself". Often, in the presence of a dispute about the ownership of a new thing within the scope of the subject of proof, in addition to compliance with legal regulations when creating a disputed real estate object, the courts pay attention to the fact of the creation of property by their own efforts or by their own means by a person who is a contender for ownership[138]. It seems to me that this shows that the courts consider more the involvement of the applicant for property in the process of creating a thing (the presence of personal labor or financing of construction), and do not literally take into account the mandatory condition for creating a thing "for themselves".

In such situations, the personal involvement of an individual in the creation of a real estate object (participation in construction work, financing, etc.) does not confirm that such actions of a person are aimed at creating a thing "for themselves". This follows from paragraphs 4 and 5 of the Resolution of the Plenum of the Supreme Court of the USSR of 31.07.1981 No.4 (ed. dated 30.11.1990) "On judicial practice in resolving disputes related to the right of personal ownership of a residential building"[139], from which it follows that "the fact of assistance to the developer" is not a separate basis for the recognition of ownership rights. In the Ruling of the Supreme Court of the Russian Federation dated 11/23/2004 No.18–V04–574[140], it is emphasized that the emergence of ownership of a part of the house for family members who assisted in its construction is possible if there are the following mandatory conditions: the existing agreement on the creation of common ownership of real estate and investment of labor and funds in the construction of a residential facility.

V. A. Alekseev, regarding the grounds for the emergence of ownership of newly created property, notes that "the determining factor for the concept of an object created for itself is the presence of the creator of the purpose of acquiring ownership of the object or part of it"[141].

In my opinion, this position most clearly characterizes the condition under consideration for the acquisition of property rights, because new property is created by the free expression of the individual's will, which is implemented in practice as a result of certain actions by a person aimed at achieving a specific result. Such a result in this case is the emergence of ownership of new property based on paragraph 1 of Article 218 of the Civil Code of the Russian Federation. However, according to the Definition of the Supreme Court of the Russian Federation dated 05/21/2019 No.307–ES18–25854, this norm regulates the basis for the acquisition of such a right (by creating a thing for oneself), but does not regulate the moment

---

135 On state registration of real estate: federal law dated July 13, 2015 No.218–FZ (as amended on December 30, 2020) // Collection of legislation. 2015. No.29 (part I). P. 4344.

136 Bevzenko R.S. The emergence of ownership of newly created real estate: commentary to Article 219 Civil Code of the Russian Federation/R.S. Bevzenko // Bulletin of Civil Law. 2019. No.3. P. 137–153.

137 Ruling of the Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation dated April 21, 2015 No.20–G15–3 [Electronic resource] // Reference and legal system "ConsultantPlus". URL: http://www.supcourt.ru/stor_pdf.php?id=1320444 (date of access: 28.03.2021).

138 Resolution of the Arbitration Court of the Ural District of March 14, 2019 No.F09–463/19 in case No.A47–2521/2018 [Electronic resource]. URL:https://kad.arbitr.ru/Document/Pdf/54ebe6c9–41b9–4595–a479–93d6cfe35224/1cb6ebe7–d502–4ac8–99bd-3564ea24b12a/A47–2521–2018_20190314_Reshenija_i_postanovlenija.pdf?IsAddStamp=True (date of access: 28.03.2021).

139 On judicial practice in resolving disputes related to the right of personal ownership of a residential building: Resolution of the Plenum of the Supreme Court of the USSR No.4 dated July 31, 1981 [Electronic resource] // Reference and legal system "ConsultantPlus". URL: http://www.consultant.ru/document/cons_doc_LAW_136496/ (date of access: 03.24.2021).

140 Ruling of the Supreme Court of the Russian Federation of 23.11.2004 No.18–B04–57 [Electronic resource] // Reference and legal system "ConsultantPlus". URL: http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=ARB;n=196313#05536036890772267 (date of access: 27.03.2021).

141 Alekseev, V. A. Real Estate Law of the Russian Federation. Real Estate Rights: General Problems /V. A. Alekseev. M.: Yurayt, 2020.

when such a right arises. According to the court, this rule should be applied in conjunction with the provisions of Articles 8.1, 131 and 219 of the Civil Code of the Russian Federation[142].

According to the articles noted by the court, the right of ownership to newly created immovable property arises from the moment of making an entry about this right in the Unified State Register of Real Estate. As follows from Article 14 of the Federal Law "On State Registration of Real Estate", the state registration of real estate is carried out in the declarative order, therefore it is impossible to implement it without the direct will of the applicant for the acquisition of property rights. Given these circumstances, it can be assumed that the very fact of applying for state registration of a real estate object, as well as providing the necessary documentation for making an entry on the ownership of real estate in the Unified State Register of Immovable Property by the person who erected it, is proof that this person built this property "for himself" in order to subsequently obtain ownership of it. A person who participated in the construction of a real estate object, but did not set himself the goal of obtaining ownership of it, with a high degree of probability will not commit actions aimed at obtaining an undesirable right[143]. After all, the existence of the right of ownership implies not only the ownership of a real estate object, but also the assumption of responsibilities for the maintenance of this property, the risks of its destruction and damage (Articles 210, 211 of the Civil Code of the Russian Federation). This conclusion follows from Article 209 of the Civil Code of the Russian Federation, if interpreted in conjunction with Articles 8.1, 131, Part 1. Articles 218 and 219 of the Civil Code of the Russian Federation.

In my opinion, the condition established in Part 1 of Article 218 of the Civil Code of the Russian Federation on the creation of a thing "for oneself" is a legally significant condition for the acquisition of property rights, and this applies to both movable and immovable property. Thus, the current legislation does not contain clear legal criteria for confirming this condition, although law enforcement practice often indicates compliance with it as necessary for the acquisition of ownership of newly created property. We believe that the condition for creating a thing "for oneself" is subject to an expansive interpretation, therefore it should be established by the courts in each specific case, depending on the specific circumstances of the case.

As for the emergence of ownership rights to newly created immovable property, we believe that compliance with the condition of creating a thing "for oneself" is confirmed by the direct implementation by the person engaged in the construction of the real estate object of the state registration of ownership of this object in the Unified State Register of Immovable Property, in any case, before the emergence of possible claims by third parties.

References

1. Alekseev, V. A. Real Estate Law of the Russian Federation. Real Estate Rights: General Problems [Pravo nedvizhimosti Rossiiskoi Federatsii. Prava na nedvizhimye veshchi: obshchie problemy]. Moscow : Yurait. 2020. 164 p.
2. Bevzenko, R. S. Acquisition of a Property Right over a Newly Erected Immoveable Unit [Vozniknovenie prava sobstvennosti na vnov' sozdavaemoe nedvizhimoe imushchestvo: kommentarii k st. 219 GK RF] // Civil Law Review [Vestnik grazhdanskogo prava]. 2019. No.3. P. 137–153.
3. Bogdan, V. V., Korotkikh, O. A. Creating Real Things for Yourself as a Condition of Acquisition of Ownership [Sozdanie nedvizhimoi veshchi dlya sebya kak uslovie priobreteniya prava sobstvennosti] // Nomothetika: Philosophy. Sociology. Law. [Nomothetika: Filosofiya. Sotsiologiya. Pravo] 2020. T. 45. No.4. P. 726–731.
4. Bogdanov, E. V. Legal Regulation the Emergence of Ownership of a New Thing [Pravovoe regulirovanie vozniknoveniya prava sobstvennosti na novuyu veshch'] // Modern Law [Sovremennoe pravo]. 2020. No.3. P. 53–57.
5. Herbutov, V. S. Overview of the Dissertations on the Topic of Unjust Enrichment // Bulletin of Civil Law. 2008. No.2. P. 77–80.
6. Commentary to the Civil Code of the Russian Federation, Part of the First [Kommentarii k Grazhdanskomu kodeksu Rossiiskoi Federatsii, chasti pervoi] / ed. T. E. Abova and A. Yu. Kabalekina. Moscow : Yuratt [Yurait]. 201 1.872 p.
7. Novikov, K. A. Extension of Pledge on the Substitute Assets: on One Rule of Article 345 of the Civil Code of Russia [O rasprostranenii (ehkspansii) prava zaloga na veshchi, proizvodnye ot iznachal'no zalozhennoi: k odnomu iz pravil st. 345 GK RF] // Herald of Economic Justice [Vestnik ehkonomicheskogo pravosudiya Rossiiskoi Federatsii]. 2017. No.1. P. 82–102.

[142] Determination of the Supreme Court of the Russian Federation dated May 21, 2019 No.307–ES18–25854 [Electronic resource]. URL:https://kad.arbitr.ru/Document/Pdf/fa8cf5dd-6d6e-4c76–bbac-b7d181dbde94/2c35f9a5–4949–4f57–9c91–b6770b9f5091/A56–21553–2017_20190521_Opredelenie.pdf?IsAddStamp=True (date of access: 25.03.2021).164 p.

[143] Bogdan, V. V., Korotkikh, O. A. Creating Real Things for Yourself as a Condition of Acquisition of Ownership /V.V. Bogdan, O. A. Korotkikh // Nomothetika: Philosophy. Sociology. Law. 2020.Vol. 45. No.4. P. 726–731.

Legal Regulation of the Peculiarities of the Organization of Antiepizootic Measures in Specially Protected Natural Areas of Federal Significance

Sergey V. Gerasimov[144]
Chief specialist of the department for organizing measures for the prevention and elimination of animal diseases, laboratory monitoring and veterinary and sanitary examination of the Veterinary Directorate of Leningrad Region, Advisor to the State Civil Service of Leningrad Region, 2nd class. Candidate of Veterinary Sciences, Lecturer at the Department of Microbiology, Virology and Immunology, St. Petersburg State University of Veterinary Medicine (SPBGUVM). 3rd year student of group YR-3–18–31 of the Law Faculty of the North-West Institute of Management of the Russian Academy of National Economy and Public Administration under the President of the Russian Federation (RANEPA), Saint Petersburg, Russian Federation; vetvra4serg@mail.ru

ABSTRACT
The article examines aspects of the legal regulation of the organization and implementation of veterinary preventive and antiepizootic measures in specially protected natural areas of federal significance on the example of outbreaks of African swine fever in the state nature reserve "Mshinskoe Swamp" of Luga district of Leningrad region in 2018–2019. An assessment of the current in the period 2018–2020 is given veterinary and environmental regulatory legal status of acts, with the revealed practical law enforcement collisions in the analyzed acts in the elimination of real outbreaks of African swine fever in Leningrad region.
The bureaucratic nature of the procedure for making decisions on the need to regulate the number of wild animals in specially protected natural areas of federal significance and the practical implementation of these measures, revealed by practical law enforcement, was leveled by local rule-making of the Veterinary Directorate of Leningrad Region, the legitimization of which was carried out by the actual elimination of infection in a reserve of federal significance and the subsequent implementation of the developed regulation by the Ministry of Natural Resources recourses and ecology of the Russian Federation into the system of quarantine measures.
At the end of the article, substantiated proposals are formulated for amending the veterinary and environmental legislation in order to prevent the occurrence of the same legal collisions in the future and to promptly eliminate outbreaks of infectious diseases in the wild fauna, in particular in specially protected areas of federal significance.
Keywords: legislation, legal regulation, veterinary medicine, environmental law, land law, infection, epizootology, specially protected natural areas, state nature reserves

Introduction

There are several shortcomings in the veterinary (and in environmental) legislation of the Russian Federation, in particular, relating to organization and implementation of veterinary preventive and antiepizootic measures in the wild fauna. Many documents have become obsolete, others have been canceled, but no regulations have been approved in return. And the new substitutive documents that were made seem to have been created without approval of the relevant departments. As a result, we can say that the veterinary and the environmental authorities of the country adopt different documents, which documents contradict each other on a number of issues.

For instance, in June 2018, when Leningrad Region was first affected by African swine fever (hereinafter ASF) in the wild fauna, inside the troublesome zones within boundaries identified by the Order of the Governor of Leningrad Region[145], there

[144] The author would like to expresses his acknowledge to: Director of the Veterinary Directorate of Leningrad Region L. N. Krotov and Director of the Federal Public Budget-Funded Institution "Nizhne-Svirsky State Natural Reserve" M.A. Antipin for competent management of quarantine measures in Federal Nature Reserve Mshinskoye Swamp in 2019–2020; Director of Public Budget-Funded Institution of Leningrad Region "Leningrad Regional Epizootic Group" E.E. Shutov and Director of the Public Budget-Funded Institution of Leningrad Region "Station for the Fight against Animal Diseases of Luga District" A.I. Serikov for active personal participation and contribution of the institutions to containment, elimination and further prevention of African swine fever in Federal Reserve Mshinskoe Swamp in 2018–2020.
[145] On introduction of restrictive measures (quarantine) due to African swine fever on the territory of Leningrad Region: Order No.386–rg of the Governor of Leningrad Region dated June 22, 2018 [Electronic resource]. URL:https://login.consultant.ru/link/?req=doc&base=SPB&n=203529&dst=1000000006 (date of access: 12.02.2021).

were secondary foci of infection, in particular, two cases in the territory of Federal Nature Reserve "Mshinskoe Swamp" of Luga District, Leningrad region (hereinafter "Mshinskoe Swamp")[146].

To remove quarantine, veterinary legislation requires in particular certain measures in the wild fauna, including regulation of the wild boar number to population density of 0.25 individuals per 1000 ha[147]. Such measures must taken since there are no specific means of infection prevention (vaccines, sera)4 and the only effective measure to combat the virus is to deprive it of its biological model (susceptible animals: domestic pigs and wild boars), by scattering the number of animals and thereby minimizing their contact[148].

This is the issue where regional executive authorities in charge of protection, control and regulation of the use of wild animals, as well territorial bodies of the Federal Service for Supervision of Natural Resource Usage /Rosprirodnadzor/ have literally no powers to initiate measures aimed at reducing the number and migration activity of wild boars in federally protected natural areas (hereinafter PNA; that means any attempts to ensure such activities independently will be regarded as poaching. The situation was aggravated by no local management of the reserve, that is, all urgent issues had to be resolved directly with the Ministry of Natural Resources and Environment of the Russian Federation (hereinafter the Ministry of Natural Resources of Russia), which greatly delayed the measures.

This topic is relevant since epizootic well-being of the territory of the Russian Federation must be maintained in order to protect health of the public and animals, in particular, by competent and prompt measures aimed at localizing and eliminating episodes of infectious diseases in the wild fauna.

The object of the study was social relations in specially protected federal natural areas, regulated by veterinary and environmental laws of the Russian Federation; the subject of the study was legal regulation of organizing veterinary prophylactic and anti-epizootic measures in federally protected areas.

The goal of the paper is to study aspects of legal regulation of organizing and performing veterinary prophylactic and anti-epizootic measures in federally protected areas using the evidence of ASF episodes in Mshinskoye Swamp of Luga District, Leningrad Region in 2018–2019.

To achieve the goal, the following tasks were set:

1. Study the procedure for organizing and performing veterinary prophylactic and anti-epizootic measures in the wild fauna using the evidence of an ASF episode.

2. Study aspects of planning and performing activities in federally protected using the evidence of a state nature reserve.

3. Analyze introduction, implementation and cancellation of ASF restrictive measures (quarantine) on the territory of Mshinskoe Swamp.

The article reviews veterinary and environmental legislation actual in 2018–2020, with an emphasis on contradictions in documents that were found during elimination of ASF episodes in Leningrad region.

The paper will also explain to how problem can be solved (bureaucratization of decision-making about regulation of the number of wild animals in specially protected federal natural areas and practical implementation of regulation measures) simultaneously with elimination of infection in a federal nature reserve; also the paper describes documents developed by the researcher, legitimacy of such documents was recognized by the Ministry of Natural Resources of Russia; thanks to those documents the quarantine measures were completed. This problem-solving procedure and the documents constitute novelty of the work; the issue of ASF elimination in a federal reserve in Leningrad Region was discussed at the Government of the Russian Federation, the solution has been worked out for over a year.

Also, the work provides, as we believe, reasonable proposals for amending the veterinary and environmental legislation in order to prevent occurrence of the same legal conflicts and promptly eliminate episodes of infectious diseases in the wild fauna, in particular in federally protected areas.

Considering that the practical example described in this article relates to 2018–2020, I we will rely primarily on Order No.213 of the Ministry of Agriculture of the Russian Federation of 31.05.2016 "On approval of veterinary rules for preventive, diagnostic, restrictive and other measures, establishment and abolition of quarantine and other restrictions aimed at preventing spread and elimination of African swine fever" (registered with the Ministry of Justice of Russia on August 24, 2016, registration No.43379). The document was adopted in 2016 and expired on March 1, 2021 due to new veterinary rules on ASF, approved by Order No.37of the Ministry of Agriculture of the Russian Federation of 28.01.2021.

---

146 On introduction of restrictive measures (quarantine) due to African swine fever on the territory of the federal nature reserve "Mshinskoe Swamp" within administrative boundaries of the municipal unit Luga District of Leningrad Region: Order No.144–rg of the Governor of Leningrad Region dated March 1, 2019 [Electronic resource]. URL: https://login.consultant.ru/link/?req=doc&base=SPB&n=209882&dst=1000000007 (date of access: 12.02.2021).

147 On approval of veterinary rules for preventive, diagnostic, restrictive and other measures, establishment and abolition of quarantine and other restrictions aimed at preventing spread and elimination of African swine fever: Order No.213 of the Ministry of Agriculture of Russia dated 31.05.2016 [Electronic resource]. URL: https://login. consultant.ru/link/?req=doc&base=LAW&n=203905&dst=1000000003 (date date of access: 12.02.2021).

148 Specific veterinary and sanitary microbiology and virology: textbook/R.G. Gosmanov, R. Kh. Ravilov, A. K. Galiullin et al. M.: Lan, 2019. 316 p.

It should also be noted that orders No.386–rg and No.144–rg of the Governor of Leningrad Region dated June 22, 2018 and March 1, 2019, respectively that introduced restrictive measures (quarantine), also ceased to be effective on April 2, 2020, due to Order No.279–rg of the Governor of Leningrad Region on abolition of restrictive measures (quarantine).

Procedure for organizing and conducting veterinary and prophylactic and anti-epizootic measures in wild fauna, evidence from the episode of African swine fever

It should be noted that the veterinary rules, approved by Order No.213 of the Ministry of Agriculture of the Russian Federation dated May 31, 2016, give no clear distinction between measures for identification of ASF among domestic pigs and wild boars; the list of with necessary measures is "mixed", some of them are inapplicable to episodes among pigs, and others, in turn, are inapplicable to wild boars. Therefore, this paper will only specify measures applicable to ASF in wild fauna.

Such measures are listed in paragraphs 20–42 of the Rules[149]. In a nutshell, they come down to the following:

1. As soon as information about a proven ASF diagnosis has been received, within 24 hours, a report shall be sent the head of the region claiming quarantine, with an attached a draft legal act about introduction of quarantine; the document shall approve an action plan to eliminate the ASF source and prevent spread of the pathogen. The quarantine resolution shall establish the epizootic focus, the infected object, the first threatened zone (the territory adjacent to the epizootic focus, with the radius at least 5 km from its borders), the second threatened zone (the territory adjacent to the first threatened zone, with the radius up to 100 km from the borders of the epizootic focus), a list of restrictive (quarantine) measures (for all territories) and the period of quarantine.

2. Immediately after the above documents have been approved, quarantine measures shall be implemented. They can be divided into two main groups:

- restrictions in certain territories, that is, prohibited actions during the quarantine period in order to prevent spread of infection, for example, exit and entry of vehicles not involved in elimination of the disease, all types of hunting, except for hunting in order to regulate the number of game resources, any activities related to movement and accumulation of animals;
- mandatory measures in certain territories, such as: destruction of animal corpses in all territories, bloodless euthanasia and destruction of all susceptible animals in the epizootic focus and the first threatened zone, creating disinfection barriers at the entrance and entry to the epizootic territory; disinfection of any vehicles leaving the epizootic territory; ensuring no stray animals on the epizootic territory; disinfection, disinsection and deratization; measures to reduce the number of wild boars to a population density of 0.25 individuals per 1000 hectares by bloodless methods; organization of round-the-clock checkpoints at the entry to the epizootic territory, conducting mass laboratory tests for ASF of all detected corpses and hunted wild boars, as well as pigs in the second threatened zone, and other measures.

3. Even after all quarantine measures have been performed, and the quarantine has been removed, the head of the region shall issue a resolution prohibiting breeding of wild boar and their import into hunting farms on the territory of the former threatened zones and into specially protected natural areas for a year, after which breeding and import is only allowed, if there are no ASF foci within a radius of 100 km throughout this period (within a year).

Contradictions between veterinary and environmental legislation when planning measures for ASF prevention and elimination in the wild fauna

The main contradiction relates to regulation of the number of game resources (i.e. wild animals, in case of ASF wild boars). Appendix 2 to Order No.138 of the Ministry of Natural Resources of Russia dated 30.04.2010 (was valid until 01.01.2021, after which Order No.965 of 25.11.2020 came into force) states the following.

The minimum number of game resources shall only be established for the resources that can be hunted under game exemptions, and for the wild boar.

The minimum number of game resources at a certain hunting ground (a hunting farm) establishes the minimum stock of wild animals which allows a hunting quota of at least one wild animal in accordance with the effective standards, and is determined by the formula: N minimum number of animal = 1 animal x100% / N additional capture, where N minimum number is the minimum number of game resources in one hunting area, N minimum number of animal is the standard for permissible hunting, hunting amount of at least one animal is 100%.

[149] On approval of veterinary rules for preventive, diagnostic, restrictive and other measures, establishment and abolition of quarantine and other restrictions aimed at preventing spread and elimination of African swine fever: Order No.213 of the Ministry of Agriculture of Russia dated 31.05.2016 [Electronic resource]. URL: https://login.consultant.ru/link/?req=doc&base=LAW&n=203905&dst=1000000003 (date of access: 12.02.2021).

When calculating the minimum number of wild boar in generally accessible hunting grounds, the standard for permissible hunting of wild boar is 10% of its total number at a hunting ground[150].

A calculation shows that, in accordance with environmental legislation, until the end of 2020, regulation of the number of wild boars in a hunting farm (hunting ground) was only possible if at least ten animals remained.

In other words, for the hunting ground to have 0.25 individuals per 1000 hectares, its area should be over 400 km2. But what if the hunting farm is only 200 km2?

That is, the order of the Ministry of Agriculture of the Russian Federation obliged to have 0.25 individuals per 1000 hectares, and the order of the Ministry of Natural Resources of Russia did not allow doing so.

Another contradiction is calculation of the number of hunting resources (wild boars).

Any hunter, hunting provider, specialist from the executive authority in charge of protection, control and regulation of the wildlife will say that the only data that can be relied on are results of the so-called winter route registration in accordance with Order No.1of the Ministry of Natural Resources of Russia of 11.01.2012, in simple terms the number of wild animals "under the tracks on the snow cover." The winter route registration is over by March 1, then the executive authorities collect results from hunting providers and calculate the population density of wild animals in the hunting area, municipality and, finally, region[151] by the formulas and coefficients under Order No.1of the Ministry of Natural Resources of Russia of January 11, 2012.

In our opinion, there are three drawbacks here.

First, updating and relevance of the data: The description above shows that updating happens once a year. That is, having established quarantine, for instance, in May, on the territory where the density is 0.8 animals per 1000 hectares, we will have to wait until April to make sure that the measures to reduce the number of wild boar were enough to remove the quarantine.

Secondly, reliability of the data: The description above shows that the counting method is very approximate. The boar could stamp on the spot, leaving several tracks and making a deceptive impression that traces were left by several animals.

Third, the counting process: The documents do not specify whether the calculator should take into account the area of buildings, reservoirs, mountains, etc. on the territory of the hunting grounds, or only take into account the habitat of the wild boar. Accordingly, if the calculator wants to get a higher density, they do not include these territories, and if the calculator wants to get a lowers density, such territories are included, thereby significantly reducing the figure[152].

On top of this, hunting farms are mostly private facilities, which means that any prohibition of amateur and sports hunting, as well as hunting for number regulation (when carcass is destroyed by burning) means a loss money for the owner. And the latter will prevent this in every possible way — by underestimating the number of wild boars, encouraging poaching and illegal sale of carcass products, which can contribute to spread of the disease. Looking ahead, we believe that it would be possible to support such facilities from the budget and by purchasing pigs and slaughter products. Let's consider it in more detail in the conclusions.

Planning and implementation of activities in federally protected areas, evidence from the state natural reserve

In order to understand what activities and to what extent can be organized at federal nature conservation areas, including the state natural reserve, it is necessary to analyze regulatory documents governing operations of federal nature conservation areas.

Each federal nature conservation area is governed by regulations on protected areas, which determine the possible use of territories within the boundaries of protected areas, and the regime for their protection. State nature reserves under consideration are mentioned in section V of the Federal Law No.33–FZ on protected areas. Further the paper will consider some of its provisions, primarily Articles 22 and 24.

In fact, state natural reserves are lands that preserve and restore nature and its components in order to maintain an ecological balance. Looking ahead, we can note that the wild boar inhabiting the territory of the state natural reserve is a natural resource, that is, a component (element) of the environmental complex to be preserved and maintained in the nature conservation areas.

Federal state natural reserves are managed by federal public budget-funded institutions the newly created / appointed by the document of the Ministry of Natural Resources of the Russian Federation. Looking ahead, we can say that in case

---

150 On approval of standards for permissible hunting and standards for the number of game resources in hunting grounds: Order № 138 of the Ministry nature of Russia of 30.04.2010 [Electronic resource]. URL: https://login.consultant.ru/link/?req=doc&base=LAW&n=212334&dst=1000000005 (date of access: 28.02.2021).

151 On approval of Guidelines for executive authorities of the constituent entities of the Russian Federation related to federally delegated powers of state monitoring of game resources and their habitat using the winter route accounting method: Order No.1 of the Ministry of Natural Resources of Russia of January 11, 2012 [Electronic resource]. URL: https://login.consultant.ru/link/?req=doc&base=LAW&n=130789&dst=1000000004 (date of access: 28.02.2021).

152 Samylina, V. G. Nature Management in the European North of Russia: monograph. Vologda State University, 2016. 213 p.

of Mshinskoye Swamp Reserve (Luga and Gatchina districts of Leningrad region), at the end of 2019 its management was assigned to the Nizhne-Svirsky State natural

Reserve", which also manages the federal reserve of the same name in Lodeinoe-Pole district of Leningrad Region and the federal protected area "East of the Gulf of Finland" (Vyborg and Kingisepp districts of Leningrad Region).

On the areas of the nature reserve, any activities are permanently or temporarily prohibited if they run counter to the goals of the creation of the reserve and / or cause harm to its nature, including animals. We pay attention to the word "temporarily", that is, hypothetically such activity is possible (again, in the case of the problem studied in this paper, we are talking about the need to reduce the number of wild boars in the state nature reserve due to an outbreak of infection)[153].

Studying the document of the Ministry of Natural Resources of Russia dated 13.01.2011, we will learn how the issue of regulating the number of wild animals, including in specially protected nature areas, is being resolved, and what documentary procedure is provided for this.

If we talk about federal specially protected nature areas, the decision to regulate the number of wild animals within their borders is made in writing by the Minister of Natural Resources and Ecology of the Russian Federation. Naturally, such a decision requires good reasons, and one of these may be the threat of the introduction and spread of infections of animals living in federal protected areas.

If there is such a threat, the Ministry of Natural Resources of Russia should study data on it, on the number of affected animals and the permissible /necessary number of their removal, the timing and methods of carrying out these measures within three days. After that, considering this information, an appropriate document is adopted (a decision on the need to regulate the number of wild animals), which is signed by the Minister and published on the official website of the ministry[154].

Paragraph 5 of the order of the Ministry of Agriculture of Russia dated 11/24/03 No.1500 approved the Regulation on Federal Nature Reserve "Mshinskoe Swamp". This provision has been agreed with the regional administration.[155] In our opinion, here is the key excerpts from the document for this paper.

One of the main functions of this state nature reserve is the preservation of hunting animals, their habitats and migration routes. Naturally, when organizing and carrying out measures to reduce their numbers, the number of animals logically decreases as well as the ways of their natural migration are disrupted: due to stress (fright), animals fight off the herd and are randomly distributed throughout the territory, especially if regulation is carried out by shooting[156].

The document prohibits carrying out activities in "Mshinskoe Swamp" that may harm the animals living in it. Naturally, we are also talking about their elimination by hunting. In addition, the document clearly states the obligation of all persons to observe the regime of special protection of "Mshinskoe Swamp" and it says about responsibility for its violation in the eyes of the law.

Thus, it is prohibited not only to "eliminate" (reduce the population) of animals (in our case, wild boars), but also to import vehicles into the territory of the state nature reserve in order to take out the extracted corpse (or to destroy it). If it is possible to carry out these activities without the above decision, in fact, they will be regarded as poaching, and the individuals who organized and carried out them will be brought to appropriate responsibility in the eyes of the law.

Detection of ASF and introduction of quarantine in State Nature Reserve "Mshinskoe Swamp"

Orders of the Governor of Leningrad Region No.734–rg dated 17.10.2018 and No.144–rg dated 01.03.2019

The first case of ASF was detected on June 13, 2018 in Luga district on the territory of the hunting farm "Rancho-Okhota". Six corpses of animals were found and the virus was detected in laboratory conditions by polymerase chain reaction. By Order of the Governor of Leningrad Region No.386–rg dated June 22, 2018, an infected object was introduced at the site of the discovery of corpses, the boundaries of the first and second threatened zones around it were designated[157].

---

153 On Specially Protected Natural Areas: Federal Law No.33–FZ of March 14, 1995 (as amended on December 30, 2020) [Electronic resource]. URL: https://login.consultant.nj/link/?Req=doc&base=LAW&n=372890&dst=100006(date of access: 30.03.2021).

154 On approval of Procedure for making a decision on the regulation of the number of hunting resources and its form: order of the Ministry of Natural Resources of the Russian Federation of 13.01.2011 No.1 (registered with the Ministry of Justice of the Russian Federation on 16.02.2011 No.19857) [Electronic resource]. URL: https://login.consultant.ru/link/?req=doc&base=LAW&n=110812&dst=1000000006 (date of access: 30.03.2021).

155 On approval of Provisions on state federal nature reserves: order of the Ministry of Agriculture of the Russian Federation of November 24, 2003 No.1500 [Electronic resource]. URL: https://login.consultant.m/link/?Req=doc&base=EXP&n=329442&dst=100003 (date of access: 30.03.2021).

156 Zhavoronkova, N. G., Shpakovsky, Yu. G. Legal Support of Environmental Safety in the Context of Economic Integration of the Russian Federation: monograph. M.: Prospect, 2017.160 p.

157 On introduction of restrictive measures (quarantine) due to African swine fever on the territory of Leningrad Region: Order No.386–rg of the Governor of Leningrad Region dated June 22, 2018No.386–rg [Electronic resource]. URL: https://login.consultant.ru/link/?req=doc&base=SPB&n=203529&dst=1000000006 (date of access: 30.03.2021).

Subsequently, in the period from June 19 to September 28, 2018, a number of successive changes were made to this Order in connection with the identification of more and more dead animals, in particular on September 6, 2018 on the territory of State Nature Reserve "Mshinskoe Swamp" near the village of Gobzhitsy, Luga district[158].

The latest detection of the ASF virus in animals of Leningrad region dates back to February 24, 2019. It was detected on the territory of State Nature Reserve "Mshinskoe Swamp" near the village of Pelkovo in Luga district. By Order of the Governor of Leningrad Region No.144–rg dated March 1, 2019, restrictive measures (quarantine) for ASF were introduced on the territory of Nature Reserve "Mshinskoe Swamp"[159].

The impossibility of organizing and carrying out measures to regulate the number of wild boars in the state nature reserve "Mshinskoe Swamp" by regional and territorial federal services and departments.

Solution to the problem

On the territory of the established epizootic foci and ASF-infected facilities, measures were taken in a timely and rapid manner to eliminate and prevent the spread of the virus in accordance with Veterinary Rules approved by Order No.213 of the Ministry of Agriculture of the Russian Federation dated 31.05.2016. Prompt and thorough approach to the elimination of each focus (infected object), as well as the competently established boundaries of the first and second threatened zones (a strong-willed decision was made not to limit the minimum radius of the zones, but to expand the territory of restrictive measures to the administrative boundaries of the Luga, Slantsy, Volosovo and Kingisepp municipal districts, thereby reducing the number of pigs and wild boars in a large area), prevented the spread of infection to the rest of the region, and also to prevent the virus from entering the industrial pig farms of Leningrad region[160].

The main measures came to thoroughly disinfect the places where corpses were found after their destruction and to prevent the spread of the ASF virus, including by taking measures to regulate (reduce) the number of wild boar to a population density of 0.25 animal unit per 1000 hectares.

The same measures were mandatory on the territory of the infected facility and the epizootic focus in Reserve "Mshinskoe Swamp".

According to the information of the Department of F-RPN for the North-Western Federal District dated 10.04.2019 No.06–25/3462, 40 wild boars were living on the territory of State Nature Reserve "Mshinskoe Swamp" during the quarantine period. Considering the fact that the area of Natural Reserve "Mshinskoe Swamp" is 60,400 hectares, in order to bring the population density of wild boars on the territory of the reserve to the target values of 0.25 animal unit / 1000 hectares, it was necessary to reduce their number by 25 units.

Due to the fact that the Committee for the Protection, Control and Regulation of the Use of Wildlife Objects of Leningrad Region and the Department of F-RPN for the North-Western Federal District are not authorized to carry out measures to reduce the number and migration activity of wild boars in specially protected natural territories of federal significance, the implementation of these measures has not been organized for a long time.

Considering that the failure to implement the above measures posed a threat to the industrial pig breeding of the region, and in order to prevent the further spread of the ASF virus, the Governor of Leningrad Region sent the appeals to the Minister of Natural Resources and Ecology, as well as the chairman of the Permanent Anti-Epizootic Commission of the Government of the Russian Federation with a request to take measures aimed at implementing quarantine measures at the specially protected nature areas of the "Mshinskoe Swamp". Drafts of these appeals were prepared by the Veterinary Department of Leningrad region[161].

The situation was further aggravated by the fact that at that time no directorate had been created yet to manage Nature Reserve "Mshinskoe Swamp". That is, any events that were to be held on this territory, had to be directly coordinated with the Minister of Natural Resources and Ecology of the country and carried out only with his direct instructions[162].

June 28, 2019 at a meeting of the Permanent Anti-Epizootic Commission of the Government of the Russian Federation chaired by Deputy Prime Minister of the Russian Federation Alexey Vasilievich Gordeev was reported about the current situation on the territory of State Nature Reserve "Mshinskoe Swamp".

---

158 Prosvirnin, G. S. Epizootological Monitoring of Cattle Leukemia and African Swine Fever Using Geoinformation Technologies: dis. ... Cand. Sciences: 06.02.02/ G. S. Prosvirnin. SPb., 2019.430 p.

159 On introduction of restrictive measures (quarantine) due to African swine fever on the territory of the federal nature reserve "Mshinskoe Swamp" within administrative boundaries of the municipal unit Luga District of Leningrad Region: Order No.144–rg of the Governor of Leningrad Region dated March 1, 2019 No.144–rg [Electronic resource]. URL: https://login.consultant.ru/link/?req=doc&base=SPB&n=209882&dst=1000000007 (date of access: 12.02.2021).

160 Report of Director of Veterinary Directorate of Leningrad Region Krotov L.N. at the Antiepizootic Commission in Vyborg on 19.12.19 [Electronic resource] URL: https://veterinary.lenobl.ru/ru/o-komitete/rukovodstvo/ (date of access: 03.05.2021).

161 Report of Director of Veterinary Directorate of Leningrad Region Krotov L.N. at the Antiepizootic Commission in Vyborg on 19.12.19 [Electronic resource] URL: https://veterinary.lenobl.ru/ru/o-komitete/rukovodstvo/ (date of access: 03.05.2021).

162 Berdinskikh S. V. Protection by the prosecutor of public interests in the use of lands of specially protected natural areas // Legality. 2018.No.2.P. 29–33.

Paragraph 2 of section IV of the Protocol of the meeting of the Commission dated 28.06.2019 № 2 ordered to consider assignment of operational management of Nature Reserve "Mshinskoe Swamp" to "Nizhne-Svirsky State Natural Reserve" for organization of anti-epidemic measures in the territory of Nature Reserve "Mshinskoe Swamp", and paragraph 3 of the same section ensures adoption of a package of measures for containment, elimination and prevention of spread of the virus on the territory of State Nature Reserve "Mshinskoe Swamp"[163].

In compliance with the Protocol of the meeting, the reserve was transferred to the operational management of the Directorate of the Federal State Budgetary Institution "Nizhne-Svirsky State Nature Reserve" by order of the Ministry of Natural Resources of Russia dated October 16, 2019[164], and by the decision of the Ministry of Natural Resources of the Russian Federation dated November 27, 2019, the directorate was instructed to take measures to regulate the number of wild boar on the territory of the reserve.

In fulfillment of the task, the Veterinary Department of Leningrad Region in cooperation with the Directorate of the reserve, developed a plan for anti-epizootic and monitoring measures for ASF in the territory of Reserve "Mshinskoe Swamp" during 2019–2020[165], and also concluded an agreement on the procedure for interaction of Federal State Budgetary Institution "Nizhne-Svirsky State Nature Reserve" with the Veterinary Department of Leningrad Region. Within the framework of this agreement, specialists of the State veterinary Service of Leningrad region were given the opportunity to travel to the territory of the reserve to carry out anti-epizootic measures: monitoring the territory in order to detect the corpses of wild boars and other biological waste, in case of their detection — organizing and carrying out their destruction; sampling biological material from wild boars of the reserve for control laboratory tests for the presence of ASF virus; other measures provided for by veterinary legislation[166].

The draft of the agreement was developed by the Veterinary Department of Leningrad Region, and this is the first practice in the country of documented interaction between the regional veterinary service and the federal institution managing specially protected nature areas of federal significance in order to carry out anti-epizootic measures in protected areas.

Consummation of quarantine measures and cancellation of quarantine

Order of the Governor of the LO of 02.04.2020 No.279–rg

In accordance with the points of the above plan and within the framework of the agreement, from December 2019 to February 2020, measures were taken to reduce migration activity and prepare for the regulation of wild boar numbers in the territory of State Nature Reserve "Mshinskoe Swamp".

In order to control the epizootic situation in the nature reserve, specialists of the State Veterinary Service of Leningrad region took samples of biological material from wild boar for research on ASF. The result of laboratory tests is negative, the genome of the ASF virus has not been detected.

The territory of the reserve with a total area of 60,400 hectares was also monitored for the presence of wild boar clusters, traces of life activity and corpses of wild boars and other biological waste. At the same time, a winter route accounting of the number of wild boar was carried out. In total, as a result of the activities on the territory of the reserve, traces of the presence of two groups of wild boars with a total number of up to 14 animal units were found. According to the final calculations, the density of wild boar was 0.23 animals per 1000 hectares[167].

Thus, the complex of necessary measures provided for by veterinary and environmental legislation was finally carried out in full on the territory of State Nature Reserve "Mshinskoe Swamp",

which was reported on March 6, 2020 at a meeting at the Ministry of Natural Resources and Ecology of the Russian Federation. In accordance with the protocol of the meeting, the structures subordinate to the Ministry of Natural Resources and Environment were instructed to promptly inform the Veterinary Department of Leningrad region about the number of wild boar in the territory of Nature Reserve "Mshinskoe Swamp" and recommended to the Veterinary Department of Leningrad Region to prepare the necessary documents for the lifting of quarantine.[168]

---

[163] Minutes of the meeting of the Standing Anti-Epizootic Commission of the Government of the Russian Federation dated 28.06.19 No. 2. 6 p.

[164] On amendments to the Charter of the Federal State Budgetary Institution "Nizhne-Svirsky State Natural Reserve": order of the Ministry of Natural Resources of Russia dated October 16, 2019 No.687, approved by order of the Ministry of Natural Resources of Russia dated June 27, 2018 No.294. 2 p.

[165] Plan for anti-epizootic and monitoring activities for African swine fever (ASF) on the territory of the state nature reserve of federal significance "Mshinskoe swamp" during 2019–2020, approved by Director of the Federal State Budgetary Institution "Nizhne-Svirsky State Reserve" November 1, 2019.

[166] Agreement on interaction between the veterinary medicine directorate of Leningrad region and Federal State Budgetary Institution "Nizhne-Svirsky State Natural Reserve".

[167] Letter from the Chairperson of the Committee for Protection, Control and Regulation of Use of Fauna of Leningrad Region No.I-767/2020 dated March 13, 2020.

[168] Minutes of 11.03.2020 No.15–17 / 26–pr of the meeting chaired by the Acting Director of the Department of State Policy and Regulation in the Development of Protected Areas and the Baikal Natural Territory A. I. Grigoriev March 6, 2020.

Having received official information about the achievement of the wild boar population density index of 0.23 animal units per 1000 hectares[169], Veterinary Department of Leningrad Region prepared a package of documents to the Governor necessary for the cancellation of quarantine from the reserve. The result of the performed work was the complete elimination of ASF in the region and the final abolition of quarantine by the Governor's Order of April 2, 2020.[170]

Conclusion

We believe that we have fully studied the aspects of regulatory of the organization and conduct of veterinary-preventive and anti-epizootic measures in the specially protected nature areas of federal significance on the example of ASF outbreaks in State Nature Reserve "Mshinskoe Swamp" in Luga district of Leningrad region in 2018–019. To do this, we have consistently solved all the tasks set in the introduction.

If we talk about the real results of the measures described in the paper to eliminate ASF in Nature Reserve "Mshinskoe Swamp", it is worth noting that their implementation has opened up a number of new prospects for veterinary medicine in Leningrad region. The procedure for imposing and removing restrictive measures (quarantine) on federal specially protected nature areas, which was developed by us and implemented in the period from autumn 2018 by the spring of 2020, it allowed to establish cooperation with the directorate of all federal protected natural areas of the region and to ensure, within the framework of the Cooperation Agreement developed and concluded during the quarantine period, permanent veterinary control in this territory. By the way, this is more than 115 thousand hectares of the region, which now hosts such events as vaccination of wild carnivores against rabies and monitoring studies of wild birds for influenza[171].

Based on practical experience in the process of eliminating an outbreak of infection in specially protected natural areas of federal significance and deeply immersed in this problem, we want to announce the following proposals for amendments to veterinary and environmental legislation in order to prevent the occurrence of the same legal conflicts in the future and the prompt elimination of outbreaks of infectious diseases in wild fauna in protected areas of federal significance.

1. To vest the territorial bodies of F-RPN with the right to coordinate decisions on the introduction of restrictions on the use of wildlife objects, including those classified as hunting resources, in specially protected natural areas of federal significance in the subjects of the Russian Federation.

2. To determine at the federal legislative level the possibility of the directorate of protected natural areas to make independent decisions on the regulation of the number of wild animals in the event of an infection in the entrusted territory and an obvious threat of its rapid spread (subject to the coordination of such a decision by the territorial body of F-RPN and the regional authority in the field of veterinary medicine).

3. To consolidate the developed mechanism between managerial bodies of nature reserves and veterinary executive authorities in compliance with in the new edition of Federal Law 33–FZ dated 14.03.1995 (recommend to all managerial bodies of federal nature reserves to execute agreements with regional veterinary executive authorities).

4. To supplement the legislation in terms of competent interaction with the private sector, the impact on it and compensation for its costs during the elimination of infection (increase fines for non-compliance with requirements, establish compensation to hunting users for wild boars obtained under the regulation of the number of wild boars by analogy with the alienation of pigs in the threatened zone).

5. To establish a clear procedure for determining the population density of wild animals (prescribe whether to consider only the area of possible habitat when calculating, or to take into account the entire area of the territory with reservoirs, mountains, etc.).

I believe that these issues will be taken into account when making the next changes to the veterinary and environmental legislation of the Russian Federation, this will make a significant contribution to maintaining the epizootic well-being of the territory of our country and, as a result, strengthening and further development of its agro-industrial complex.

References

1. Zhavoronkova, N. G., Shpakovsky, Yu. G. Legal Support of Environmental Safety in the Context of Economic Integration of the Russian Federation: monograph [Pravovoe obespechenie ehkologicheskoi bezopasnosti v usloviyakh ehkonomicheskoi integratsii Rossiiskoi Federatsii: monografiya]. M. : Prospect, 2017. 160 p. (in rus)
2. Prosvirnin, G. S. Epizootological Monitoring of Cattle Leukemia and African Swine Fever Using Geoinformation Technologies: dis. ... Cand. Sciences: 06.02.02. [Ehpizootologicheskii monitoring leikoza krupnogo rogatogo skota i afrikanskoi chumy svinei s ispol'zovaniem geoinformatsionnykh tekhnologii : dis. ... kand. nauk: 06.02.02] / G. S. Prosvirnin. SPb., 2019. 430 p. (in rus)

169 Letter from the Chairperson of the Committee for Protection, Control and Regulation of Use of Fauna of Leningrad Region No.I-767/2020 dated March 13, 2020.

170 On abolition of restrictive measures (quarantine) for African swine fever on the territory of the federal state nature reserve of "Mshinskoe Swamp" within administrative boundaries of Luga municipal district of Leningrad region and on recognizing certain orders of the Governor of Leningrad region as invalid: order of the Governor of Leningrad region dated 02.04.2020 No.279–rg [Electronic resource]. URL: https: // login.consultant.ru/link/?req=doc&base=SPB&n=224480&dst=1000000006 (date of access: 03.05.2021).

171 Antiepizootic measures in specially protected natural territories of Leningrad region [Electronic resource]. URL: https://veterinary.lenobl.ru/ru/protivoepizooticheskie-meropriyatiya-na-osobo-ohranyaemyh-prirodnyh-te/ (date of access: 03.05.2021).

3. Samylina, V. G. Nature Management in the European North of Russia : monograph [Prirodopol'zovanie na Evropeiskom Severe Rossii : monografiya]. Vologda State University, 2016. 213 p. (in rus)
4. Veterinary Directorate of Leningrad Region : Report by L. N. Krotov. at the Antiepizootic Commission in Vyborg on 19.12.19 [Electronic resource]. URL: https://veterinary.lenobl.ru/ru/o-komitete/rukovodstvo/ (date of access: 03/05/2021). (in rus)
5. Private Veterinary and Sanitary Microbiology and Virology : textbook [Chastnaya veterinarno-sanitarnaya mikrobiologiya i virusologiya : uchebnoe posobie] / R. G. Gosmanov, R. Kh. Ravilov, A. K. Galiullin and others. M.: Lan, 2019. 316 p. (in rus)

Review of the interdepartmental scientific and practical seminar Faculty of Law, NWIP RANEPA on the topic "Legal Science and Law Enforcement Practice: interaction problems "(May 27, 2021)

Nikolay V. Razuvaev
Doctor of Law, Head of the Department of Civil and Labor Law of the North-West Institute of Management of the Russian Academy of National Economy and Public Administration under the President of the Russian Federation, St. Petersburg, Russian Federation; nrasuvaev@yandex.ru Irina K. Shmarko, Editor of the Publishing and Printing Center North-West Institute of Management — Branch of the Russian Presidential Academy of National Economy and Public Administration, Saint-Petersburg, Russian Federation; shmarko-ik@ranepa.ru

On May 27, 2021, a round table on the topic 'Legal Science and Law Enforcement Practice: Problems of Interaction' was held at the Faculty of Law of the Northwestern Institute of Management of the RANEPA, organized by the Departments of civil and labor law and constitutional and administrative law. The seminar was attended by lecturers of the Department of law: Professor Lyudmila Borisovna Eskina, Associate professors Vladimir Leonovich Wolfson, Valentina Petrovna Yesenova, Elvira Tagirovna Mayboroda, Marina Leonidovna Makarevich, Nikolai Petrovich Sedykh, Larisa Vladimirovna Schwartz, Senior lecturer Gulnara Nikolaevna Kopyatina and others. The event was co-moderated by the head of the Department of civil and Labor Law Nikolai Viktorovich Razuvaev and the head of the Department of constitutional and administrative law Anna Konstantinovna Solovyova.

During the discussion, issues related to the digitalization of the judicial system, problems of constitutional justice at the regional level, as well as acts of higher judicial instances as sources of law were discussed. Opening the work of the section, N. V. Razuvaev focused on the ideological, methodological and applied functions of legal science and on the place of scientific knowledge in the structure of legal activity.

According to N. V. Razuvaev, all types of practical activities of lawyers are based on the results of scientific developments and implement trends that characterize fundamental scientific knowledge. Legal science, therefore, has a direct applied effect, and the results obtained by it are reflected in law-making, law enforcement, and especially in judicial practice. This influence can be traced in all legal systems and throughout their entire history, as evidenced by the examples of developed and perfect legal systems of the past.

For example, in Roman law, the activities of lawyers, the consultations they gave (responsa) were used as a formal basis for making court decisions. Legal science had an equally important practical significance in the Middle Ages (for example, in Muslim law), as well as in the legal systems of the early Modern period. To make sure of this, it is enough to recall that the provisions from the works of Blackstone, G. Grotius and a number of other most authoritative scientists were used to restore gaps in legal regulation in cases where there were no specific norms. Moreover, legal historians have come to the conclusion that the oldest monuments of legislative activity (such as the Laws of Hammurabi or the Laws of the XII tables) were not just created by lawyers whose names have not been preserved on the pages of history, but also became the results of a scientific generalization of the variety of specific factual situations that developed in everyday social life. Thus, according to the researcher of Ancient Eastern law V. A. Yakobson: 'The laws of Hammurabi are the result of a thorough generalization and systematization of written and unwritten norms of law at different times'[172].

However, the considered influence of legal science on law-making and law enforcement becomes especially noticeable in crisis situations that characterize the change of paradigms of scientific knowledge with the transition to new stages of socio-cultural evolution. As the American philosopher Thomas Kuhn showed in his classic work 'The Structure of Scientific Revolutions', the evolution of scientific knowledge is characterized by periods of stable development of the so-called 'normal science', followed by abrupt transitions to new paradigms that represent models of setting research tasks and ways of solving them that are generally accepted in science at one or another stage of development[173].

The current stage of the development of legal science (first of all, the theory of law) indicates the transition to a new paradigm of cognition. If in the 1990s the rejection of the Marxist-Leninist ideology did not lead to a qualitative growth of scientific knowledge, then in recent decades, through the efforts of such theorists as A.V. Polyakov, A.V. Stovba,

[172] History of the Ancient East. The origin of the oldest class societies and the first centers of slave-owning civilization. Partone. Mesopotamia. Moscow: Nauka, 1983. p. 372.
[173] See: Kuhn T. The structure of scientific revolutions. Moscow: Progress, 1977.

I. L. Chestnov, etc., a post-classical theory of law was formed, corresponding to modern trends in the development of legal science and largely stimulating them[174].Taking into account the circumstances considered, N. V. Razuvaev concluded that the legal doctrine is still one of the main sources of legal education and has far from exhausted its significance as a source of law in the formal legal sense.

In the speech of V. P. Esenova, such aspects of digitalization of the courts' activities as automation of internal processes, in particular, the distribution of cases between judges, audio and video recording of court sessions, as well as automation of sending court notifications to participants in the process, making court decisions using special software were considered.

Thus, it was noted that the automation of the distribution of cases between judges, taking into account their specialization and workload, is not new in itself. This system, for example, was introduced in arbitration courts back in 2009.Now the task of using it is set before the courts of general jurisdiction, but this does not take into account the specifics of the judicial system, namely the fact that the judicial composition of the district court often has only one judge of a certain specialization, considering, for example, cases concerning land issues and real-estate. Accordingly, all cases of this specialization fall to this judge, which leads to a huge increase in the burden on such a judge, his burnout and often dismissal. Therefore, the use of automation tools for the distribution of cases without taking into account the specifics of a particular judicial composition of a particular district court will not contribute to achieving the goals for which, in fact, this system is being introduced.

The use of technical methods of recording sessions in the form of audio and video recordings in courts is also not new and has also been introduced in the system of arbitration courts for a long time. In the courts of general jurisdiction, the technical possibility of using these technologies itself depends to a greater extent on financing. Rather, the legal question is whether, when conducting audio and video recordings of meetings, it is necessary to completely abandon the paper registration of procedural documents, in particular the minutes of sessions.

The participants of the discussion came to the conclusion that, at least at the present time, a complete rejection of the written procedural document flow is not desirable, since the technologies do not yet have sufficient reliability and widespread use[175]. On the one hand, the use of blockchain technology in the preparation of court decisions and acts in electronic form would allow them to be more reliably protected from forgery, but this technology itself remains quite expensive. On the other hand, which is typical especially for courts of general jurisdiction, where the main participants in the process are citizens, not all participants use the technologies, have the appropriate hardware.

The exclusion of paper document management may put some citizens who do not have access to technologies in a vulnerable position compared to those who have it. This problem can be considered on the basis of the problem of proper notification of the participant of the proceedings about a particular procedural action. When using electronic communication methods, it is not always possible to guarantee and control the delivery and receipt of the relevant notification by the party. For example, a person may not have a personal account on the public services portal, an email address, or may have a phone that does not support the acceptance of documents of various file formats, etc.

In addition, it is difficult to verify whether the document was actually sent in electronic form to the recipient's address by the court. A citizen will not be able to conduct such a check on his own, he will obviously need at least the help of a lawyer, for which a citizen may not have the means. Also, the paper registration of the proceedings is an effective means of proving procedural and other violations committed during the trial, as part of the appeal of relevant decisions and acts in higher instances.

Another example of automation is the introduction of technologies for the preparation of judicial acts within the framework of public proceedings using software tools. Currently, an experiment is being conducted in several magistrates' precincts in the Belgorod Region, within the framework of which the preparation of court orders based on received documents on a number of indisputable cases will be automated and judges will only approve the relevant documents. The participants of the discussion noted that at the stage of writ proceedings, such automation does not create a significant threat of violation of the debtors ' subjective rights, since they still have the opportunity to submit objections to the issued order and then the trial will move to the stage of the claim proceedings. However, there is a problem with the use of self-learning neural networks, which consists in the fact that a person cannot control the decision-making process by a machine, but sees only the result.

At the same time, there have already been cases when the program came to erroneous conclusions, in particular, cutting off the number of potential employees according to discriminatory criteria, for example, gender, formed by the machine on the basis of the database obtained for previous periods in which women worked less and, accordingly, the number of their resumes in the total data volume was less, from which the machine concluded that hiring women is less desirable[176]. Thus, taking into account the peculiarities of the algorithms, the complete exclusion of a person from the decision-making process is hardly desirable at the present time. Especially considering that the decision is made by judges not only on formal grounds, but also on the basis of internal conviction, taking into account aspects of the legal culture of a particular community.

---

174 See: Chestnov I. L. Postclassical Theory of Law, Moscow: Alef-Press Publishing House, 2012.

175 The problem of forms of judicial communication in the context of the general laws of their historical dynamics was discussed on the pages of the journal 'Theoretical and Applied Law'. See: Razuvaev N. V. The history of the Roman civil procedure as a universal model of the evolution of the law and order of the Ancient world // Theoretical and Applied Law. 2020. No.3 (5). pp. 46–62.

176 See: [Electronic resource]. URL: https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G (date of access: 02.06.2021).

In accordance with Article 2 of the Civil Procedure Code of the Russian Federation, civil proceedings should contribute to strengthening law and order, preventing offenses, forming a respectful attitude to the law and the court, and peaceful settlement of disputes. Automation of decision-making will also reduce the role of participation of attorneys and lawyers in the processes, which may negatively affect the realization of the right of citizens for defense in court. Automated legal proceedings are not capable of achieving such goals.

G. N. Kopyatina considered the problems of the existence of institutions of constitutional justice in the subjects of the Russian Federation, the issues of participation of state authorities of the subject of the Russian Federation in the appointment of judges of the constitutional court of the subject of the Russian Federation. Despite the fact that the actual activity of the constitutional (statutory) courts of the subjects of the Russian Federation is terminated from 01.01.2023 (taking into account the amendments made to the Federal Constitutional Law of December 31, 1996 No.1–FKZ 'On the Judicial System of the Russian Federation'), this issue is important in terms of determining compliance with the balance and the principle of separation of powers, ensuring legality at the regional level, in particular, the areas stipulated by the Constitution of the Russian Federation that are subject to independent regulation at the level of the subjects of the Russian Federation.

In the decision of the Constitutional Court of the Russian Federation No.2–P[177] of January 18, 1996, it was noted that the subjects of the Federation in the relations between the legislative and executive authorities are obliged to adhere to the same model of relations between these branches of government as at the federal level. At the same time, the Act of the Constitutional Court of the Russian Federation of December 27, 2005, No.491–O[178] stipulates that the authorities of the subject independently determine the scope of competence of the constitutional (statutory) court of the subject, the assignment or termination of the powers of judges of the constitutional (statutory) court of the subject, while maintaining the balance of the branches of power, as well as guarantees of independence and independence of judges of the constitutional (statutory) court of the subject of the Russian Federation.

The constitutions of the republics most often use a scheme of relations in which judges of constitutional courts are appointed by the legislative body on the proposal of the head of the subject, that is, following the example of the procedure for appointing judges of the Constitutional Court of the Russian Federation. From the analysis of twelve laws on the constitutional courts of the republics, ten such republics belong to group of republics using such scheme of relations (Bashkortostan, Dagestan, Ingushetia, Kabardino-Balkaria, Karachay-Cherkessia, Komi, Mari El, Sakha (Yakutia), North Ossetia — Alania, Chechnya). At the same time, it should be taken into account that the activities of the constitutional courts of Buryatia, Tyva and Karelia have been removeed[179].

Unlike most republics in the Republic of Tatarstan, judges of the Constitutional Court of the Republic of Tatarstan are elected in equal numbers by the President of the Republic of Tatarstan and the Chairman of the State Council of the Republic of Tatarstan[180]. It should also be noted that not all republics have the authority to participate in the nomination of candidates for the positions of judges of the constitutional courts, representatives from the legislative and judicial authorities, which does not fully take into account the representation of the interests of various branches of government.

An example of such a balance is demonstrated by the Republic of Adygea, where proposals for the position of judges of the Constitutional Court of the Republic of Adygea are made by representatives from the legislative, executive and judicial authorities. Judges of the Constitutional Court of the Republic of Adygea are appointed by the State Council — Khase of the Republic of Adygea from among the candidates recommended by the qualification board of Judges of the Republic of Adygea, on the proposal of:

1) deputies, deputy associations of the State Council — Khase;

2) the head of the Republic of Adygea;

---

177 In the case about the verification of constitutionality of certain provisions of the Charter (Basic Law) of Altai Krai: ruling of constitutional Court of 18 January 1996, № 2–P // Collection of the legislation of the Russian Federation. 1996. No.4. St. 409.

178 At the request of the St. Petersburg City Court on checking the constitutionality of certain provisions of the Federal Constitutional Law "On the Judicial System of the Russian Federation", the Law of the Russian Federation "On the Status of Judges in the Russian Federation" and the Federal Law "On bodies of the Judicial Community in the Russian Federation": definition of the Constitutional Court of the Russian Federation No.491–O of December 27, 2005// Bulletin of the Constitutional Court of the Russian Federation. № 2. 2006.

179 On the abolition of the Constitutional Court of the Republic of Buryatia: Law of the Republic of Buryatia No.2938–V of May 9, 2018 [Electronic resource]. URL: https://docs.cntd.ru/document/543736525 (date of appeal: 08.06.2021); On the abolition of the Constitutional Court of the Republic of Tyva and the invalidation of Certain Legislative Acts of the Republic of Tyva: Constitutional Law of the Republic of Tyva No.30–KZRT dated January 11, 2019 [Electronic resource]. URL: https://docs.cntd.ru/document/550333661 (date of access: 08.06.2021); On the abolition of the Constitutional Court of the Republic of Karelia and the invalidation of certain Legislative acts (provisions of legislative acts) of the Republic of Karelia: the Law of the Republic of Karelia of February 25, 2021 No.2547–SAM [Electronic resource]. URL: https://docs.cntd.ru/document/465426873 (date of access: 08.06.2021).

180 On the Constitutional Court of the Republic of Tatarstan: Law of the Republic of Tatarstan No.1708–XII of December 22, 1992 (as amended). The Law of the Republic of Tatarstan No.22–ZRT of May 7, 2020) [Electronic resource].URL: https://docs.cntd.ru/document/917000213 (date of notification: 08.06.2021).

3) the Supreme Court of the Republic of Adygea[181].

Thus, not all republics provide for the powers to participate in the nomination of candidates for the positions of judges of the constitutional courts of representatives from the legislative and judicial authorities, which does not fully take into account the representation of the interests of various branches of government in the region.

The amendments of 2020[182], introduced in Part 3 of Article 118 of the Constitution of the Russian Federation, established the list of courts that make up the judicial system of the Russian Federation. This list includes the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, federal courts of general jurisdiction, arbitration courts of the subjects of the Russian Federation. Thus, the constitutional (statutory) courts of the subjects of the Russian Federation were not included in this list, which affected the amendment of the law on the judicial system of the Russian Federation.

A number of researchers express the idea that the subjects of the Federation lose the opportunity to implement the principle of separation of powers at the regional level, which may lead to a lack of control over the legislative and judicial authorities[183].The participants of the discussion agreed that the activity of the constitutional (statutory) courts of the subjects of the Russian Federation is important for establishing the balance of authorities in the region, but today this system has shown its inefficiency, since out of 85 subjects of the Russian Federation, only fifteen have constitutional (statutory) courts that consider a small number of cases per year.

Based on the fact that the constitutional courts that are part of the system of separation of powers are not created in all the republics of the Russian Federation, it can be concluded that the principles of separation of powers and unity of state power are not implemented sufficiently at the regional level. It is possible that in the future the legislation will return to the creation of constitutional (statutory) courts of the subjects of the Russian Federation. At the same time, the creation of judicial bodies of the subjects of the Russian Federation will be associated with the development of federalism in Russia and the improvement of the functioning of the regional constitutional (statutory) justice.

V. L. Wolfson suggested discussing the problems of sources of law on the example of explanations and decisions of the sessions of the higher courts. As the main thesis for discussion, the question was raised that the explanations and decisions of the higher courts in the Russian Federation have actually acquired the status of sources of law, for which there are no regulatory grounds. At the same time, this situation is not combined with the idea of separation of powers. This problem does not exist by itself, but is the result of the general problem of the unsystematic existence of sources of law in the Russian legal system.

Of course, the acts of the highest judicial instances play an important role in the formation of a stable judicial practice, but at the same time they should not replace rule-making and should not become a source of law.

Perhaps, the processes of development of the domestic legal order in the early 1920s became a distant historical prerequisite for giving judicial decisions the meaning of formally legal sources of law, when, in the conditions of extremely low quality of the level of local justice, the highest judicial instances began to assume a decisive role in law enforcement. In pre-revolutionary Russia, the supervisory judicial instance performed an exclusively managerial function in terms of monitoring compliance with the procedure of legal proceedings and could take measures within a specific case in the form of specifying the required procedure for applying the law or pointing out an omission, that is, the higher court could not tell the lower court exactly how to resolve a particular case.

After the revolution of 1917, the situation changed, which led to the formation of an approach in which, first of all, the compliance of court decisions with a specific norm was put at the forefront. This approach led to the fact that there was a fairly wide range of persons who could demand a review of the case, and the case could be subject to review even without the desire of the participants in the process themselves. Thus, the internal conviction of the judge was not decisive during making decisions, the main thing was to ensure that the decision corresponded to the norm.

So, knowing the historical prerequisites for the emergence of such an approach and taking into account modern realities, it is necessary to objectively say that in fact the acts of the highest judicial instances serve as sources of law, there are no formal grounds for which today. Such an imbalance entails a violation of the principle of separation of powers, without which a legal democratic state cannot exist.

---

181 On the Constitutional Court of the Republic of Adygea: Law of the Republic of Adygea No.11 of June 17, 1996 (as amended). The Law of the Republic of Adygea dated July 6, 2020 No.349) [Electronic resource]. URL: https://docs.cntd.ru/document/446648833 (date of access: 08.06.2021).

182 On improving the regulation of certain issues of the organization and functioning of public power: the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation No.1–FKZ of March 14, 2020// Collection of Legislation of the Russian Federation. 2020. No.11. P. 14–16.

183 See: Evloev I. M. Abolition of constitutional (statutory) courts of the subjects of the Russian Federation: a pattern or a mistake? // Actual problems of Russian law. 2020. Vol. 15. No.10 (119). pp. 141–150; Dvoimenny I. A. Regional Constitutional Justice: Status and Prospects // Region: Systems, Economy, Management. 2021. No.1 (52). pp. 188–194.

Director of Publishing and Printing Center
E. Yu. KNYAZEV

Executive Editor I. K. SHMARKO

Proofreader E. A. LYSUNETS

Layout Designer A. L. SERGEENOK

Founder
Russian Presidential Academy of National Economy and Public Administration (RANEPA)

PUBLISHER
The North-West Institute of Management, Branch of the Russian Presidential
Academy of National Economy and Public Administration (RANEPA)

Certificate of registration of mass media
EL no. FS 77-77212 of 08.11.2019

ADDRESS OF EDITORIAL OFFICE:
199004, V. O., 8-ya liniya, d. 61, St. Petersburg.
Tel: (812) 335-94-72, 335-42-10. E-mail: shmarko-ik@ranepa.ru

Signed for publication on 25.06.2021.
The minimum system requirements are a CD-ROM device and software for reading pdf files.
Website of journal https://www.taljournal.ru
The data volume is 2.0 MB.
Circulation (number of media) 60 pcs.

The layout was prepared by the Publishing and Printing Center of the North-West Institute of Management
of the Russian Presidential Academy of National Economy and
Public Administration
199004, St. Petersburg, Vasilievsky Island, 8th line, 61.
Phone: (812) 335-94-97