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Dear Readers!

The year of 2017 in the Oriental calendar is the year of the Fire Rooster which promises to be more successful and full of events. According to the Oriental calendar, the rooster is the most colorful, sociable, and exquisite. It likes to attract attention and adores compliments.

At present, there is a clash of geopolitical, economic and military interests between the major participants of the world economy. We can speak about several centres of international power; they are: the US, united Europe, China, Japan and Russia. But Russia (if to remember statements by Z.Brzezinski) has another role to play. As for united Europe, the leading role is likely to be played by Germany. The United States approves of this idea, but only on one condition – under the control of the US. Therefore, it seems logical that G.Soros asked A.Merkel to be the head of united Europe.

The confrontation between Russia, on the one hand, and the United States and Western countries, on the other hand, is not just a dispute about who the first is and who is stronger. This confrontation is, first of all, caused by pursued economic interests over trade markets and mineral resources. If Russia, for example, loses one of its allies, like Syria, it will have to surrender very many positions in the Middle East, including quite a large trade market. Mass media have recently published information on a possible construction of pipelines to deliver natural gas from Qatar to Europe. Such a step will make the *South Steam* that Russia has been working on just useless and will significantly decrease the importance of the *North Stream*.

As Z.Brzezinski once noted, “the New World Order under the hegemony of the USA is created against Russia, at the expense of Russia and on the ruins of Russia”.

Foreign policy is the continuation of domestic policy and, first of all, of the development of the national economy of Russia. An economically

developed state with a powerful military infrastructure is the leader on the international, European and regional arenas. It is a law and psychology of leadership and a leader!

On 23 July 2017, the founder of the Economic (and currently, Entrepreneurial) Law Department, the Faculty of Legal Service in the National Economic System (currently, the Institute of Entrepreneurship and Law), Professor, Doctor of Law, Honoured Lawyer of the Russian Federation – Vasiliy Stepanovich Yakushev would have turned 95 years old. On 19-20 October 2017, the first *Yakushev's Readings* will be held in the memory of such an outstanding person and a highly skilled professional.

Dear readers! Take care of yourselves and your family. Love your neighbours as yourselves. Not to lose yourself in this raging world is very important.

Editor-in-Chief, Doctor of Law, Professor V.S. Belykh

THE CONTENT OF THE RIGHT TO INFORMATION ACCORDING TO THE LEGISLATION OF THE RUSSIAN FEDERATION: THE RATIO OF PRIVATE AND PUBLIC

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Abstract
The article reveals the content of the constitutional right to information and raises problems associated with the exercise of this right, including the right to access to information, the right to privacy, the right to protection of information.

Keywords: information, right to information, access to information, confidentiality of information, protection of the right to information, self-protection of the right to information.

The Constitution of the Russian Federation[1] has been consolidating the idea of the rule-of-law state that the main value is people, and the main guarantor of rights and freedoms is the state itself. The section of the Constitution on rights and freedoms of Russian citizens includes a whole list of rights enshrined in international covenants and agreements, and it is the greatest achievement of the legal system of modern Russia and the legal expression of its democratic aspirations in all areas of public life. One of such achievements is the right of a person to information.

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[1] The Constitution of the Russian Federation (adopted by popular vote 12 December 1993) (as amended on the basis of Laws of Amendments to the Constitution of the Russian Federation on 30 December 2008 No.6-FKZ, 30 December 2008 No.7-FKZ, 5 February 2014 No.2-FKZ, 21 July 2014 No.11-FKZ)// official Internet portal of legal information http://www.pravo.gov.ru. 1 August 2014.

Thus, the Constitution of the Russian Federation establishes, "Everyone has the right to freely seek, receive, transmit, produce and disseminate information by any lawful means". This right seems to be one of the fundamental rights and freedoms of the individual that are subject to unconditional protection from the state and arise from the moment of birth. Thus, the nature of the right to information does not mean that it is abstract; it always belongs to the individual who is involved in public relations, so it is a subjective right.

The content of subjective rights usually includes: the possibility of action; demands; protection; possibility to use the social good. The right to information includes the following: an opportunity to freely seek, receive, transmit, produce and disseminate information by any legal means; a possibility to require appropriate behavior from other persons to ensure the named powers; an ability to use the social benefit - information; an ability to claim protection from the state to freely seek, receive, transmit, produce and disseminate information by any legal way.

In accordance with Federal Law of 27 July 2006 No.149-FZ "On Information, Information Technologies and Information Protection"[2] (hereinafter - the Law on Information), the right to private actions means that citizens (physical persons) and organizations (legal entities) shall be entitled to seek and receive any information in any form and from any source subject to the requirements established by federal laws. In addition, the owner of information is entitled to allow or restrict access to information, define order and terms of such access; to use information, including to distribute it, at its sole discretion; transfer information to other persons under a contract or otherwise by law; to protect their rights in a way established by the law in case of illegal obtaining of information or illegal use by other persons; to carry out other actions concerning information or to permit such actions.

[2] Federal Law of 27 July 2006 No.149-FZ (as amended on 29 July 2017) "On Information, Information Technologies and Information Protection"// Collection of Legislation of the Russian Federation. – 2006. – No.31 (part 1). – Art.3448.

As for the right to require others to fulfill their duties, first of all, it should be noted that the triumph of democracy in most modern states has made us realize that freedom of information is one of the most important human rights. In this regard, almost all current Constitutions provide for the right of everyone to access information on the activities of bodies of state power and bodies of local self-government. Currently, many states define the procedure of access to such information. The Russian Federation is no exception in this area. Thus, Article 8 of the Law on Information stipulates that a citizen (physical person) has the right to receive information directly affecting his rights and freedoms from state bodies, bodies of local self-government, and their officials in the order established by the legislation of the Russian Federation. The organization also has the right to receive information directly concerning the rights and obligations of the organization from state bodies and bodies of local self-government, as well as information required in connection with the interaction with the specified bodies in the exercise of the activities by the organization.

So far, the Russian legislator has refused from adopting a general federal law which would regulate the basic provisions of ensuring the right to information. Instead, the Russian legislator adopts separate special laws regulating individual areas of information access. So, in 2006, legislators adopted Federal Law No.59-FZ "On the Procedure of Considering Applications of the Citizens of the Russian Federation"[3] providing citizens with the right to appeal personally and, also, to submit individual and collective appeals to state bodies, local self-government bodies and officials, including in the form of statements with a request for assistance in exercising their constitutional rights and freedoms to receive information. In 2008, there was another Federal Law No.262-FZ adopted "On Providing Access to Information on the Activities of Courts in the Russian Federation"[4].

[3] Federal Law of 2 May 2006 No.59-FZ (as amended on 3 November 2015) "On the Procedure of Considering Applications of the Citizens of the Russian Federation"//Collection of Legislation of the Russian Federation. – 2006. – No.19. – Art.2060.

[4] Federal Law of 22 December 2008 No.262-FZ (ed. 23 June 2016) "On Providing Access to Information on the Activities of Courts in the Russian Federation"// Collection of Legislation of the

One of the last in this series was Federal Law of 9 February 2009 No.8-FZ "On Providing Access to Information on the Activities of State Bodies and Bodies of Local Self-Government"[5], regulating the issues of access to information on the activities of government bodies and bodies of local self-government, establishing a possibility of direct communication of citizens with the authorities[6].

The above said enables us to conclude that the right of access to diverse information, which is concentrated in state and municipal systems, corresponds to such duties of the state and municipal authorities, such as the obligation to provide access to the requested information; the obligation to collect and provide information of public interest and importance; the obligation to support the development of the information sphere of the state. The actual implementation of the information duties by the public authority ensures information transparency, and transparency of its activities.

The indicators of moving towards the information society are the extension of the range of public information and simplified procedures to access it, and increased information services. In modern conditions, we must inevitably reevaluate both rights and responsibilities of governments and citizens in the information sphere. States not ready for such a transformation can find themselves on the sidelines of the world development. The information legislation should be guided by the interests of people and should improve the quality of their life and ensure the transparency of information and access to it.

At the same time, we should not determine all the content of the right to information only to free information. The powers included in the content of

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Russian Federation. – 2008. – No.52 (part 1). - Art.6217.

[5] Federal Law of 9 February 2009 No.8-FZ (ed. 9 March 2016) "On Providing Access to Information on the Activities of State Bodies and Local Authorities"// Collection of Legislation of the Russian Federation. – 2009. – No.7. – Art.776.

[6] Velikiy A.P. Commentary to Federal Law of 9 February 2009 No.8-FZ "On Providing Providing Access to Information on the Activities of State Bodies and Local Authorities"// Reference Law System "Garant".

this right encompass not only the human right to participate in the informational relations but also the right to restrict the free circulation of information affecting their interests. The value of the information is provided by its distribution and by limiting access to it. Restricted circulation of information provides value to information constituting a state secret, commercial secret and other secrets. Consequently, the domestic content of the right to information represents the ratio of the freedom of information and privacy rights[7]. In other words, the right to information is not absolute, that is, it has some limits due to the right to privacy. Freedom of information and the right to privacy directly complement and limit each other.

The implementation of the right to information should be combined with such a natural and inalienable right of everyone as the right to inviolability of private life or, in other words, the right to privacy, to confidentiality in respect of their personal data and information constituting personal or family secret, privacy of correspondence, commercial secrets, attorney, medical and notary secrecy, etc.

Despite the fact that the Constitution of the Russian Federation and federal laws do not stipulate the right of citizens to privacy, such a right should be recognized among the fundamental rights and freedoms of a man and citizen. This right is supported by the general constitutional principles and is in full compliance with the Russian legislation.

The right to confidentiality means a possible limitation of the right to access to information, but limitations of this right are permissible only in

[7] Despite a wide application of the concept of "privacy" in the legislation and legal literature, its contents and ratio of different types of secrets is not defined. One position is that "privacy" means a special legal regime established by law or on the basis of the law, which implies the following measures: restriction of access to information; prohibition of its transfer to third parties without the consent of the holder of information (except for cases established by law); prohibition of dissemination of information (arising from the first two positions); the ability of the owner of information as a general rule, to decide the question of confidentiality; the derivative nature of the duty to preserve confidentiality of the information of one subject from the primary obligations of another entity - the owner of the information – to provide it to the public authority or the local authority, and the contractor under the contract or other person (See: Tereshchenko L.K. Pravovoi rezhim informatsii [The Legal Regime of Information]…from the dissert. for a Doctor of Law degree. M., 2011).

exceptional cases, when there are grounds of harm to the public interest or threats to cause such harm. Thus, the restriction of access to information is established by federal laws in order to protect the foundations of the constitutional system, morality, health, rights and lawful interests of other persons, national defense and state security (Article 9 of the Law on Information). Restrictions in this case constitute restrictions on the distribution of certain kinds of information depending on its content, subject matter, or a negative social effect they can produce.

Our reality shows that there are some contradictions between the private interests of citizens and public interests of the state. The Russian citizens have a constitutional right to access to information, which, however, may be restricted in order to protect the public interest. Thus, the Constitutional Court of the Russian Federation considered a complaint from a citizen on the discrepancy between the Constitution of the Russian Federation and separate provisions of Federal Law of the Russian Federation of 21 July 1993 No.5485-1 “On State Secrets”[8] in connection with the ongoing stage of a criminal case and came to the conclusion that any information can be available to the citizen, if the collected documents and materials affect his rights and freedoms, and the federal legislator does not provide for an exemption from the general permission of the special legal status of such information and not available for distribution in accordance with the constitutional principles (Article 55 of the RF Constitution). The Constitution does not imply that the right of everyone to receive information directly affecting his rights and freedoms as well as the duty of public authorities and their officials to provide the appropriate information can be completely eliminated, but rather, under all conditions the specified limits of restrictions of this right must be complied with depending on the content of information.

The given legal position based on the provisions of Articles 2, 17, 18 and 55 of the Constitution of the Russian Federation on the priority of the

[8] Federal Law of the Russian Federation of 21 July 1993 No.5485-1 (ed. 8 March 2015) “On State Secrets” //Collection of Legislation of the Russian Federation. - 1997. – No.41.

rights and freedoms of the individual for the state and their inalienable nature and a possibility of only necessary and proportionate limitations meets the requirement of Article 7 of Federal Law "On State Secrets", according to which information on the facts of violation of the rights and freedoms of a man and citizen, as well as on violations by bodies of state power and their officials, is not subject to classification as state secrets and classified[9].

However, the main element of the subjective right to information is a right to the protection of information. However, such properties of information as a *physical impossibility of its alienation* from the generator of information and any person in the possession of it, as well as *its detachment* from the generator may be crucial in the application of adequate measures to protect the right to information; such measures are different from the measures of protection of rights to traditional objects.

Taking into account the specific features of information in the protection of rights from Article 12 of the Civil Code of the Russian Federation[10], it is not possible to insist on the award of specific performance of this duty. At the same time, the law provides for special methods of protection of the right to information: suppression of actions violating the regime of confidential information or if there is a threat of such a violation; the payment of compensation in case of impossibility to determine the size of

[9] The decision of the Constitutional Court of the Russian Federation of 6 November 2014 No.27-R "On the Case of Checking Constitutionality of Article 21 and Article 21.1 of the Law of the Russian Federation "On State Secrets" in connection with the complaint of citizen O.A.Laptev"// official Internet portal of legal information http://www.pravo.gov.ru, on 11 November 2014.

[10] The Civil Code of the Russian Federation (part one) from 30 November 1994 No.51-FZ (amended on 28 March 2017)// Collection of Legislation of the Russian Federation. – 1994. – No.32. – Art.3301; Civil Code of the Russian Federation (part two) of 26 January 1996 No.14-FZ (ed. 28 March 2017)// Collection of Legislation of the Russian Federation. – 1996. – No.5. – Art.410; Civil Code of the Russian Federation (part three) of 26 November 2001 No.146-FZ (amended on 28 March 2017)// Collection of Legislation of the Russian Federation. – 2001. – No.49. – Art.4552; Civil Code of the Russian Federation (part four) of 18 December 2006 No.230-FZ (amended on 3 July 2016, rev. on 13 December 2016) (with amendments and supplements effective on 1 January 2017)// Collection of Legislation of the Russian Federation. – 2006. – No.52 (part 1). – Art.5496.

the damage; the prohibition to use the information in one's activities; the recognition of the transaction valid.

Article 46 of the RF Constitution guarantees judicial protection of the rights and freedoms of the citizen of the Russian Federation; it establishes that decisions and actions of state authorities, local self-government bodies, public associations and officials can be appealed against in court.

The RF Law "On Appealing against Actions and Decisions Violating the Rights and Freedoms of Citizens"[11] adopted on 27 April 1993 actually created an entirely new mechanism designed to ensure effective protection of rights and legitimate interests of citizens by proceedings on complaints and a comprehensive court control over the activities of officials and managing bodies. With the adoption of the Constitution of the Russian Federation, this mechanism has received its constitutional status. In its turn, the Plenum of the RF Supreme Court on the basis of the Constitution recommended that the courts promptly examine the materials related to the restriction of the rights of citizens to privacy of correspondence, telephone conversations, postal, telegraph and other messages, entry into a dwelling, if such materials are submitted to the court[12]. However, the judicial system of Russia turned out not to be ready to protect the rights of individuals and legal entities in the sphere of information security.

Currently, every citizen (physical person) or legal person, believing that his right to access to information on the activities of state bodies or bodies of local self-government has been violated, is entitled to appeal against acts of these bodies or their officials.

[11] Law of the Russian Federation of 27 April 1993 No.4866-1 (amended on 9 February 2009) "On Appealing against Actions and Decisions Violating the Rights and Freedoms of Citizens"// Gazette of the Congress of People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation. – 1993. – No.19. – Art.685. The document is invalid since 15 September 2015 in connection with the adoption of Federal Law of 8 March 2015 No.22-FZ (ed. on 23 June 2016) "On the Introduction of the Code of Administrative Procedure of the Russian Federation" (amendments and supplements effective since 1 January 2017).

[12] Resolution of the Plenum of the RF Supreme Court of 24 December 1993 No.13 (ed. on 6 February 2007) "On Some Issues Connected with the Application of Articles 23 and 25 of the Constitution of the Russian Federation"// Bulletin of the RF Supreme Court. – 1994. – No.3.

To ensure a more reliable protection of the rights of the person to information, it is proposed to amend section 2 of Article 17 of the Law on Information which reads as follows: "Persons, whose rights and legitimate interests have been violated in connection with the denial of access to information, untimely provision, or provision of knowingly false information or information which does not correspond to the requested information, disclosure of restricted information or other misuse of such information, may apply in the prescribed manner for judicial protection of their rights, including claims for damages, compensation for moral harm, protection of honor, dignity and business reputation. Decisions and actions (inaction) of state bodies and bodies of local self-government, public associations, and officials violating the right to access to information can be appealed against to a higher authority or higher official or in court". Accordingly, paragraphs 6 and 7 in Article 8 of the Law on Information should be deleted.

Despite the consolidation of various forms of protection of the right to information in the Russian legislation, the main way of protecting this right is self-defense[13]. Self-defense of the right to information may include certain independent actions undertaken by an authorized person, or absence of any action, such as ignoring the illegal demands of the state authorities or local self-government bodies and their officials. In the cited example, self-defense will be legitimate and justified if the holder of the information, first, has knowledge in the field of information law and, secondly, has the skills of applying this legislation in practice.

As an example, let us take the provisions of Federal law of 26 December 2008 No.294-FZ "On Protection of Rights of Legal Entities and Individual Entrepreneurs When Exercising State Control (Supervision) and Municipal Control"[14]. If during the check of documents, the accuracy of information

[13] Belova T.V. Pravovoe regulirovanie zashchity informatsii i prav na nee v grazhdanskom prave [Legal Regulation of the Protection of Information and Rights to it in Civil Circulation]…from the dissert. for a Candidate of Law degree. M., 2006.

[14] Federal Law of 26 December 2008 No.294-FZ (amended on 1 May 2017) "On Protection of Rights of Legal Entities and Individual Entrepreneurs When Exercising State Control (Supervi-

contained in the documents at the disposal of a state control (supervision) body or a municipal control body causes reasonable doubts, or the submitted information does not allow to estimate the performance of compulsory obligations by a legal entity or an individual entrepreneur, the state control (supervision) body or the municipal control body is expected to send a motivated request to the address of the legal entity or the individual entrepreneur with the requirement to submit other necessary documents. Within ten working days from the date of receipt of such a request, a legal entity or an individual entrepreneur must send to the authority of state control (supervision) or municipal control all the documents specified in the request.

At the same time, legal entities and individual entrepreneurs should be aware that this Federal Law has a narrow scope of application and, in particular, it is not applied to the control activities aimed at combating improper use of insider information and market manipulations. It means that it is not necessary to submit the specified information to the authority of state control (supervision) or municipal control.

In conclusion, it is important to note that the difficulties in the implementation of the right to information entail difficulties in the implementation of other rights of citizens. Therefore, it is necessary to pay special attention to raising the legal culture of citizens that will contribute to the democratization of the Russian society and the formation of a rule-of-law state.

sion) and Municipal Control" (amendments and supplements effective since 1 January 2017) // Collection of Legislation of the Russian Federation. – 2008. – No.52 (part 1). - Art.6249.

ON THE PERSPECTIVES OF RUSSIAN STUDIES ON CONSTITUTIONAL ECONOMICS

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Abstract
The article analyses topical issues of the concept of constitutional economics. The author underlines that it is actively being developed in industrial countries. The main vector of its development is focused on the study of the structure and monitoring mechanism of constitutional control. On the other hand, the article analyses the concept of constitutional economics from the perspective of theorists of the Russian school of law. The author makes conclusions and offers further study and improvement of the concept.

Keywords: constitutional economics, concepts and models, the Russian perspective, main vectors of study

The development of economic constitutionalism was accounted for by an increased number of social and economic articles and chapters introduced in the constitutions of the majority of modern states. Rules proclaiming sharp expanded legal regulation of business processes, direct interference of the state in the economy, protectionism in the foreign economic policy, the social character of the state, and other ideas began to be reflected in the supreme law of the world leading countries at the turn of the 19th and 20th centuries.

G.N. Andreeva rightly states that current constitutions are full of economic terminology, many economic principles and concepts that "cannot be derived from legal relations and assessed only from juridical positions without considering their specific economic content"[1].

Consequently, we can speak about a certain duality in the nature of the current constitutions. This duality is expressed in the following: on the one

[1] G.N. Andreeva. Ekonomicheskaia konstitutsiia v zarubezhnykh stranakh [Economic Constitution in Foreign Countries]. Moscow, 2006, p.8.

hand, constitutions are aimed to define relations between citizens and the state as to the political power and basic characteristics of the state institutions (“the political constitution”) and, on the other hand, to fundamentally regulate economic relations in view of the growing socio-economic role of the state (“the economic constitution”).

This duality is also a reason for the fact that constitutions contain “not a proper legal element”, thus, requiring “translation” of economic notions into the legal language. So, “the diversity of views on the content of a constitutional norm so common for lawyers is accompanied by “an alien element”, because the scientific paradigm, the language and concepts of the economic study differ from the legal ones”[2]. There are various provisions regulating economic relations in the basic laws of different countries. So, naturally, they generate a substantial interest of lawyers and economists to study constitutions.

During the last third of the 20th century, James Buchanan and his followers initiated the development of a new academic sub-discipline – constitutional economics. This outstanding scholar is the Nobel Prize winner in Economic Sciences (1986) “for his development of contractual and constitutional foundations for the theory of economic and political decision-making”.

The concept of constitutional economics is directly connected with the theory of public choice that can be defined as “economic study of non-market decision-making, or simply the application of economics to political science. The subject of public choice is the same as that of political science: the theory of state, voting rules, voter behavior, party politics, the bureaucracy, and so on. The methodology of public choice is that of economics, however”[3].

James Buchanan stresses that the theory of public choice “takes the tools and methods that have been developed to quite sophisticated

[2] Ibid, p.10.

[3] Dennis C. Mueller. Teoriia obshchestvennogo vybora //panorama ekonomicheskoi mysli kont-sa XX stoletiia [The Theory of Public Choice// The Panorama of Economic Thought of the Late XX Century] Volume 1/ ed. by D.Greenaway, M. Bleaney, I. Stewart. St.Petersburg, 2002, p.248.

analytical levels in the economic theory" and on this basis "makes an attempt to propose understanding and explanation of complex institutional interactions in the sphere of political activity"[4].

The key assumption of the economic approach to the examination of political and public administration of the decision-making process is the provision that the activities of political and state institutions may be explained with the help of "*the economic man*" model. In other words, the subjects of these institutions – government officials and politicians on the voter-markets and those working in the legislature – are rational and pursue their own interests. It is important to underline that the normative economic approach within the limits of the public choice theory is complemented by a positive analysis of the noted state activity and the efficiency of various voting systems.

From the view of the public choice theory, the process of taking collective decisions is examined within formal rules. But the research in the constitutional economics focuses on the rules that are being formed and are subject to challenges. According to James Buchanan, the constitutional economic analysis ultimately facilitating the discussion of political issues "attempts to explain the working properties of alternative sets of legal-institutional-constitutional rules that constrain the choices and activities of economic and political agents"[5]. The object of the analysis is the constitution that is understood as a set of rules connected with the public order, its formation, and amendment.

Constitutional economics is actively developing in foreign countries. The main vector of its development is the study of the structure and the choice of mechanisms used to exercise constitutional control over the government.

[4] James M. Buchanan. Politika bez romantiki: kratkoe izlozhenie pozitivnoi teorii obshchestvennogo vybora i eiyo normativnykh uslovii [Politics without Romance: a Sketch of Positive Public Choice Theory and its Normative Implications // Vekhi ekonomicheskoi mysli. Ekonomika blagosostoianiia i obshchestvenny vybor [Benchmarks of the Economic Thought. Economy of Welfare and Public Choice]. Volume 4, St.Petersburg, 2004, p.420.

[5] James M. Buchanan. Konstitutsional'naia ekonomicheskaia teoriia [Constitutional Economics] // Ekonomicheskaia teoriia [Economic Theory] / ed. by John Eatwell, Murray Milgate and Peter Newman. Moscow, 2004, p.167.

Constitutions are known to structure the relations between the state and the citizens. So, they regulate individual rights and freedoms, the authority of government agencies, and the control of the state power. Controlling rules are made on the basis of democratic elections (voter control) together with the division of legislative, judicial and executive powers in accordance with the principles of the rule-of-law state. These types of control are being criticized by representatives of constitutional economics.

Thus, imperfection of the voter control in current constitutions may be caused by several factors. Some of them will be outlined here[6].

First, as policy is regarded as public welfare, motivations for the level of voter awareness are low in practice. *Second*, there are considerable difficulties in controlling the decisions of state authorities connected with the specific measures and persons. *Third*, democratic voting procedures in some cases are not able to merge individual preferences into consistent decisions of the majority.

Add to the said historically attributed modification of separation of powers, especially between the highest legislative body and the government. A typical feature of democratic states is the close union between the government and the parliamentary majority when the interests of the latter are less aimed at controlling but more at safeguarding and supporting the government. So, the separation of powers is reduced to a limited control over the ruling party by the opposing parties.

Imperfect voter control and certain constitutional circumstances give rise to certain motivations and possibilities to use policy (especially economic policy) in the interests of limited groups of voters. Relevant actions provide benefits for such groups of special interests. By contrast, the costs are extensively distributed. Thus, these constitutional rules favor the economic and social policy orientated at ensuring private organized interests.

[6] See: Analiz ekonomicheskikh sistem: osnovnye poniatiia teorii hoziaistvennogo poriadka i poriadka politicheskoi ekonomiki [The Analysis of Economic Systems: Basic Notions of the Theory of Business Order and Political Economics] /ed. by A.Schuller and H.-B. Krusselberg. Moscow, 2006, pp.217 – 218.

A relatively new school of constitutional economics in Russia was founded by such outstanding scholars as O.Kutafin, the Rector of the Moscow State Law Academy, G.Gadzhiev, a judge of the RF Constitutional Court, V.Lafitsky, the Deputy Director of the Institute of Legislation and Comparative Law under the Government of the Russian Federation, V.Mau, the Rector of the Russian Presidential Academy of National Economy and Public Administration, and others. The studies being carried out in its framework are based on a complex constitutional, legal and economic analysis given to problems of the economic development and guaranteed constitutional rights and freedoms of citizens.

The first Russian textbook on constitutional economics defines this discipline as a research area that examines the principles of optimal combination of economic viability and the achieved level of constitutional evolution reflected in the rules of constitutional law that regulate economic and political activities in the state[7]. This textbook analyses in great detail the economic content of the RF Constitution; discusses constitutional and legal prerequisites for the efficient functioning and development of the economy; regulates property issues; examines the state impact on the economy, constitutional regulation of taxation and the budget process, the constitutional and legal status of the Bank of Russia, and issues of the Russian banking system development.

While the authors of the textbook recognize James Buchanan as a discoverer of constitutional economics, they suppose that the current century will demand “a more thorough study and use of the constitutional and legal element of the said scientific direction” and the presented canonical formulation of the constitutional economics subject “would likely alert any constitutional lawyer”[8].

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[7] P.D. Barenboim, G.A. Gadzhiev, V.I. Lafitskiy, V.A. Mau. Konstitutsionnaia ekonomika [Constitutional Economics]. Moscow, 2006, p.10.

[8] P.D. Barenboim, G.A. Gadzhiev, V.I. Lafitskiy, V.A. Mau. Konstitutsionnaia ekonomika [Constitutional Economics]. Moscow, 2006, p.12.

A significant feature of the domestic school of economics is not only the detailed comments of the basic provisions contained in the RF Constitution but an in-depth review on how to use constitutional principles in regulating economic relations in the RF Constitutional Court Rulings. Moreover, on the basis of the specific Rulings of the RF Constitutional Court, one can highlight certain principles of constitutional economics: the principle of equality, the principle of justice, the principle of proportionality, the principle of good faith and inadmissibility of abuse of rights.[9]

However, this list can be continued. Thus, the constitutional status of the principle of the freedom of contract was recognized by the RF Constitutional Court in its Ruling of 23 February 1999 No.4-P. Later, this principle was repeatedly affirmed by the Court (e.g. in its Ruling of 28 January 2010 No.4-P). So, the freedom of contract being not directly enshrined in the RF Constitution is identified by the RF Constitutional Court on the basis of Art.8.1 of the RF Constitution on the guaranteed freedom of economic activity and Art.34.1 of the RF Constitution that gives everyone the right to a free use of his abilities and property for entrepreneurial and economic activities not prohibited by law.

The established Russian version of constitutional economics contextually resembles the concept of "*the economic constitution*" based on the idea that the state is limited by the right in the economic sphere. This concept covers a whole body of constitutional rules in the economic sphere. The development of the economic constitution is usually connected with such names as the economist Walter Eucken and the lawyer F. Böhm as well as with the contribution of the German school of Ordoliberalism into the European constitutional law.

The said is recognized by G.A. Gadzhiev, the most active supporter of promoting constitutional economics in our country. He points out that the understanding of constitutional economics as "an interdisciplinary economic and legal research aimed at finding a national model of the

[9] Constitutsionnaia ekonomika [Constitutional Economics] /ed. by G.A.Gadzhiev. Moscow, 2010, pp.50-71.

constitutional economic public order may not cover all possible issues of this new research area but, in any case, it does not match James Buchanan's understanding of the problems presented by constitutional economics"[10].

Russian lawyers tend to interpret constitutional economics in a narrow "economic sense". Thus, constitutional economics is defined as a sum of interdisciplinary scientific knowledge on how the constitutional rules and principles must form the acceptance of the essential economic decisions[11], this is "one of the most interesting creative interdisciplinary areas developing the regulatory potential of the most generalized and socially significant constitutional rules in the economic sphere"[12], and its subject is the "correlation of real economic relations to the norms of the constitutional text (and sometimes, due to the abstract character of constitutional rules, principles and fundamentals of the constitutional order)"[13].

However, the given definitions and interpretations are not directly related to the recognized understanding of the subject of constitutional economics. The key point for formulating its brief generalized definition and differentiating from the theory of public choice is the distinguishing between the rules of the game as such and plays of the game within these rules that defines the learning objective of constitutional economics. In short, constitutional economics researches "*the choice of constraints* as opposed to *the choice within constraints*[14].

[10] G.A. Gadzhiev. Tseli, predmet i soderzhanie kursa "pravo i ekonomika" [Task, Subject Matter and Syllabus of the Course "Law and Economics"]// Biznes, menedzhment i pravo [Business, Management and Law]. 2011. No.2, p.14.

[11] Ocherki konstitutsionnoi ekonomiki [Essays on Constitutional Economics]/ed. by G.A. Gadzhiev. Moscow, 2009, p.5.

[12] V.D. Mazaev. Metod konstitutsionnogo prava i konstitutsionnaia ekonomika [Method of Constitutional Law and Constitutional Economics]// Filosofiia prava v nachale XXI stoletiia cherez prizmy konstitutsionalizma i konstitutsional'noi ekonomiki [Philosophy of Law in the Beginning of the XXI Century through the Prism of Constitutionalism and Constitutional Economics]. Moscow, 2010, p.194.

[13] S.E. Nesmeyanova. Rol' Konstitutsionnogo Suda Rossiiskoi Federatsii v razvitii kontseptsii "konstitutsionnoi ekonomiki" [The Role of the RF Constitutional Court in the Development of the "Constitutional Economics" Concept]// Biznes, menedzhment i pravo [Business, Management and Law]. 2011. No.2, p.16.

[14] James M. Buchanan. Konstitutsional'naia ekonomicheskaia teoriia [Constitutional Economics] p.167 – 168.

The research programme of constitutional economics is focused on the study of "working properties of rules and institutions within which individuals interact, and the processes through which these rules and institutions are chosen or come into being"[15]. But such research must be conducted de jure and *de facto.* Modern Russia has low indices values of economic freedom and property rights protection, high indices of perceiving corruption, low indices of the public's trust to legislative and law enforcement authorities, etc. The said inevitably leads to the problem of improving the mechanism for implementing the basic rules and principles of the RF Constitution, and this problem requires a scientific solution.

The research of constitutional economics may be limited to the following questions[16].

What advice can we offer to ourselves in our own societies, having benefits of cooperation on the one hand and possible conflicts on the other hand?

What aspects of our social life should we discard?

What "rules of social order" - institutional arrangements governing our interactions - force us to affect one another adversely?

Where are the forces for harmony that can be mobilized?

What rules and what institutions should we be struggling to preserve?

Therefore, we find it not necessary to prove that such questions and conceptual answers to these questions are of paramount importance for the development of the Russian constitutionalism, society, and the state.

So, not quite appropriate is the statement that constitutional economics will become "the most successful" within "the limits of the methodological development of the general theory of constitutional law and the philosophy of law"[17]. On the contrary, this academic discipline calls for expanding the

[15] Buchanan J. M. The Domain of Constitutional Economics // Constitutional Political Economy. 1990. No.1. Vol.1. P.1.

[16] See: Geoffrey Brennan, James M. Buchanan. Prichina pravil. Konstitutsionnaia politicheskaia ekonomiia. [The Reason of Rules: Constitutional Political Economy]. St.Petersburg. 2005, p.23.

[17] V.D. Mazaev. Ibid, p.194.

principles and methods of the economic analysis to the sphere of traditional use of constitutional law and politology. In this sense, constitutional economics is a constituent part of a wider discipline – the economic analysis of law.

Guido Calabresi, a prominent legal expert, states that the economic analysis of law examining the world from the standpoint of the economic theory "confirms legal reality, casts doubts upon and often seeks to reform it. In fact, it acts as an Archimedean place to stand on and upon which to place a lever, a lever that permits a scholar, when appropriate, to argue for change in that legal reality"[18].

All in all, the list of themes that can be highlighted by the economic analysis of the constitution is rather extensive[19]. It includes the economic theory of developing constitutional rules of the political system (principles of federalism, in particular), economic consequences of certain constitutional doctrines, economic interpretation of basic constitutional provisions, the correlation between the constitution and the economic growth, etc.

It seems that modern constitutional economics is able to identify some current problems of implementing basic principles of the RF Constitution and to take part in drafting efficient mechanisms for their operation, to define and conceptually formulate the priority areas and key tasks of the Russian constitutionalism.

[18] Guido Calabresi. Budushchee prava i ekonomiki. Ocherki o reforme i razmyshleniia [The Future of Law and Economics: Essays in Reform and Recollection]. Moscow, 2016, p.13.

[19] See: R.A. Posner. Ekonomicheskii analiz prava [The Economic Analysis of Law], St.Petersburg, 2004, V.2, pp.830 – 831.

A SET OF ACTIONS ON ECONOMIC CONCENTRATION (PART 2)

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Abstract
The article focuses on the issues of economic concentration, and namely offers a comprehensive analysis of the Protection of Competition Act. The author makes a list of criteria of the state control over economic concentration and analyses not only flaws of this phenomenon but offers changes to be introduced in the legislative regulation of economic concentration transactions.

Keywords: economic concentration, the Protection of Competition Act, state control over economic concentration, criteria of control, the anticompetitive effect of corporate economic concentration transactions

A comprehensive analysis of Articles 27, 28 and 29 of the Protection of Competition Act (PCA) makes it possible to set a legitimate legal system of market power criteria that underlies the state control over economic concentration, which is built on three groups of criteria:

1) property criteria of control that determine a degree of the market power include:

a) the total assets value of commercial and financial organizations (Art.27, 28 and 29 of the PCA);

b) the total revenue of commercial organizations within a certain time interval (Art.27 and 28 of the PCA);

c) the total assets value of a resulting entity of economic concentration and its group of persons (Part 1, Art.28 of the PCA);

d) the book value of property acquired or received in ownership, use or possession of an economic entity (group of persons) (Clause 7, Part 1, Art.28 of the PCA);

e) production assets of commercial and non-commercial organizations as an object of an economic concentration transaction (Part 1, Art.26 of the PCA);

f) intangible assets, equal in the legal regime to property assets, of Russian commercial and non-commercial organizations as an object of an economic concentration transaction (Part 1, Art.26 of the PCA).

2) Corporate criteria of control that determine a degree of the market power. Their feature is that they are universal for both commercial and financial organizations. Depending on the subject matter of the transaction, there are two types of criteria:

a) organizational and legal criteria determining the way of creation or reorganization of a legal entity, that is the resulting entity of economic concentration (creation, merger or accession - Part 1 of Art.27 of the PCA);

b) corporate control criteria characterizing the level and degree of corporate participation and management rights redistribution in a legal entity that result from the economic concentration transaction (part 1 of Art.28 and Art.29 of the PCA).

3) Organizational criteria of control that determine a degree of the market power, which is usually based on an agreement. Their peculiarity lies in the fact that they have the legal nature of the obligations, the use of which allows determining conditions for conducting entrepreneurial activities by the economic concentration object or for carrying out the functions of its executive body (cl.7 Part 1 Art.28 and cl.8 Part 1 Art.29 of the PCA). The grounds for the emergence of such rights can, in particular, include:

a) contracts of trust management of property;

b) agreements on joint activities;

c) appointment agreements;

d) agency agreements;

e) contracts of commercial concession;

f) framework agreements;

g) long-term supply contracts and other vertical agreements of the organizational content (cooperation agreements);

h) corporate contracts;

i) participation of economic entities in self-regulating organizations.

1. At the same time, it is necessary to point out a number of flaws in the legislative regulation of the preliminary control over transactions with shares and interests acquisition of commercial and financial organizations.

1) The first remark concerns the legal and technical formalization of this part of the state control system. Taking into account the fact that the corporate control criteria for commercial and financial organizations are identical, it is possible to fix the legal regulation of transactions with shares (interests), property of commercial and financial organizations, as well as rights to them within one article (Art.28 of the PCA). In this case the article should be supplemented with conditions for the transactions accountability established for financial organizations by the Government of the Russian Federation in agreement with the Central Bank of Russia, as it is done in Art.29 of the PCA.

2) Organizational criteria of control (unlike property and corporate criteria) do not have any subject. In particular, the Protection of Competition Act (cl.8 p.1 Art.28 and cl.8 p.1 Art.29) has no precise indication on the content of acquired rights with respect to both commercial and financial organizations. The conditions for carrying out the entrepreneurial activity of the resulting entity of economic concentration or performing functions of its executive body may also be different, not only depending on the content of the acquired rights, but also on their scope. Therefore, it is necessary to recognize that currently the qualitative criteria of the market power - expressed in the form of organizational and mandatory control over the activity of the object of economic concentration in Russian

legislation - have a clearly evaluative character. That is why the law enforcer is required to have a sufficiently high qualification to exercise state control over economic concentration and resolve disputes in cases related to the implementation of this control.

3) There is a certain inconsistency in the legal technique between the legal regime of the state control over the establishment and reorganization of commercial and financial organizations (Art.27 of the PCA) and the legal regime for the acquisition of their shares (interests), property and rights to them (Art.28 and Art.29 of the PCA). First of all, this refers to the legal regime of the dominance of the financial organizations criteria over the criteria established for economic concentration, the resulting subject of which are commercial organizations, in determining the accountability of transactions for the creation and merger of commercial and financial organizations (Art.27 of the PCA). During the control over the transactions with shares (interests), property of commercial and financial organizations and rights to them, the legal regime of dominating the criteria established for financial organizations is not traced. As a result, it remains unclear whether there are differences in the legal regime of transaction accountability, when corporate, property or organizational control over a commercial institution is acquired by a financial organization and vice versa. In addition, based on the content of Art.29 of the PCA, it does not follow that if a financial institution acquires the right to control a commercial organization, with the total value of the assets by the last balance sheet of it and its group of individuals exceeds 250 million rubles (as it is established for commercial organizations in Part 1 of Art.28 of the PCA), such a transaction acquires signs of accountability.

To correct these flaws, it seems necessary to introduce the following changes in the legal regulation of control over economic concentration transactions:

1) The legal regime for the dominance of financial organizations accountability criteria, regulated by Art.27 of the PCA, should cover

transactions for the acquisition of shares (interests), property both of commercial and financial organizations, as well as rights to them (i.e. to the objects of transactions reflected in Art.28 and 29 of the PCA). This will promote unification of the antimonopoly legislation and the formation of uniform legal regulation concerning similar economic entities.

2) The basis for determining the legal regime of transaction accountability should depend on the specific character of a resulting subject of economic concentration itself but not on the economic concentration transaction participants (derivative entities). In this regard, the total value assets criterion of the economic concentration object (by analogy with Art.28 of the PCA this object is a commercial organization) should be included in the number of accountability criteria of economic concentration transactions when establishing commercial organizations (Art.27 of the PCA). In cases, where the object of economic concentration is a financial organization, the relevant criteria established by the Government of the Russian Federation and the Bank of Russia for economic concentration transactions with respect to financial organizations should be applied.

3) Another criterion should be the specific character of participants in the economic concentration transaction. This criterion is reflected in Art.27 of the PCA, but is not taken into account in Art.28 and 29 of the PCA. While describing the consequences of acquiring shares (interests), property of commercial and financial organizations that are the resulting subjects of economic concentration, these articles do not take into account the specifics of the transaction participants which can be not only commercial but also financial organizations. It is necessary to form legal regulation in such a way to avoid legal uncertainty, for example, when shares of a commercial organization are acquired by a financial organization. In this sense, it may also be useful to combine Articles 28 and 29 of the PCA by introducing a general legal regime of dominance of the government control criteria that is regulated in relation to financial organizations. At the same time, the principle of transaction accountability establishment

should be maintained in accordance with the criteria set for the economic concentration resulting subjects, regardless of whether they are commercial, non-profit or financial organizations.

2. *Criteria of preliminary and notifying (subsequent) state control for the economic concentration.* Depending on the potential anticompetitive effect of a transaction, the legislator establishes a certain legal regime of state control that can be realized both before the transaction is conducted (*ex ante*) and after it is conducted (*ex post*). The difference between these regimes is quite obvious: in cases where the anticompetitive effect of a transaction is potentially high, preliminary control is required; in other cases, the antimonopoly authority may be notified about conclusion of the transaction by its parties post factum (notification control).

In accordance with this main principle, it is necessary to prevent restriction of competition and debar anticompetitive consequences of economic concentration transactions in establishing the legal regime of preliminary state control. But this goal of state control is aimed at protecting public interests. However, the legal regime of preliminary control is an essential element of civil law protection of the economic entities rights. The existence of this regime allows to prevent not only the publicly negative consequences of conducting economic concentration transactions, but also to exclude a possibility of applying provisions on the deals invalidity (parts 2, 4 and 5 of Art.34 of the PCA), as well as to avoid the forced reorganization of a legal entity in the form of separation or segregation (part 1, Art.34 of the PCA).

The establishment of subsequent control is related to the lack of a "hard" potential anticompetitive effect from conducting an economic concentration transaction. The execution of actions subject to the notifying order implementation of the state control over economic concentration does not have such a significant impact on the state of competition like transactions subject to preliminary control. Before the institution of notifying control over transactions was excluded from the antimonopoly

legislation[1], the criteria for its application were the same which were the basis of preliminary control (total revenue and total assets value of the transaction participants), with the only difference that the limits of these values were significantly lower. At the same time, the economic concentration objects of preliminary and notification control were practically identical.

Withdrawal of the general rule concerning the notifying order of the state control over economic concentration has led to the fact that currently the notifying order of the state control is retained only with respect to transactions carried out within a group of persons (part 1 Art.33 of the PCA). The application to check the compliance of the draft agreement in the written form with the requirements of the antimonopoly legislation provided by part 1, Art.35 of the PCA cannot be recognized as the basis for the notifying order, since the legislator defines the filing of such an application as a right but not as an obligation of the parties to this agreement. This indicates that the quantitative criteria of the state control are not determinative; they perform only an subsidiary function: allow to limit the range of transactions most potentially dangerous for the state of competition. Qualitative (informative) transaction criteria are the basic in determining the legal regime of the state control. Namely, these criteria are: 1) the object of the deal (creation and reorganization of legal entities, transfer of property, corporate and obligatory rights) and 2) the legal form of the deal (contractual, corporate, contractual and corporate). Contractual transactions and corporate transactions seem to have the most potential anticompetitive effect.

The potential anticompetitive effect of virtually any horizontal or vertical agreement is due to a high degree of the probability of negative consequences, listed in parts 1-4 of Art.11 of the PCA. Therefore, to prevent these consequences, any agreements should be subject to the state

[1] See: Federal Law of 28 December 2013 No.423-FZ “On Amendments to Federal Law “On the Protection of Competition Act” //Collection of Legislation of the Russian Federation, December 2013, No.52 (part I), Art.6988.

control over economic concentration. However, part 1 of Art.35 of the PCA practically does not establish such a legal regime for the state control over transactions that can be considered admissible from the point of view of antimonopoly legislation, since it does not contain the obligation of the agreement participants to conduct mandatory control but only establishes their right to voluntarily agree upon the content of the agreement with the antimonopoly authority. At present, the content of the above mentioned rule is that according to it almost all types of agreements entered into by business entities in the process of their market interaction are not subject to the mandatory state control over economic concentration. The discussion of such deals with the antimonopoly body is the right but not the obligation of their participants. This situation is unacceptable; therefore, it is necessary to determine the criteria under which the state control regime should apply to such transactions. Such a criterion may be the focus of the transaction on the market power dynamics. For example, a contractual or organizational connection of competitors, creating conditions for the coordination of their activities by a third party etc. should be considered as an economic concentration transaction, while a regular purchase and sale transaction between the supplier and the buyer cannot and should not be qualified as an economic concentration transaction and, consequently, the legal regime of preliminary negotiation with the antimonopoly authority which is established in Art.35 of the PCA should not be applied.

The elimination of this defect should be carried out simultaneously in two directions.

Firstly, it is necessary to amend the notion of "an economic concentration transaction" defining it through the nature of its consequences, by analogy with the signs of dominance which express the legal equivalent of the market power: an economic concentration transaction "has a decisive influence on the general conditions of the goods circulation on the relevant commodity market and (or) removes other economic entities from this

commodity market and (or) obstructs access to this commodity market by other economic entities". As a result, paragraph 21 of Art.4 of the PCA can be formulated as follows: "21) the object of economic concentration - transactions, other actions listed in the legislation of the Russian Federation, the implementation of which has or may have an impact on the state of competition, including in the form of the formation of a dominant position signs (Ch.5 of this Federal Law) restricting the agreements competition (Art.11 of this Federal Law) and concerted actions (Art.11.1 of this Federal Law)".

Secondly, taking into account the fact that the legislator has already regulated the quantitative criteria for participants of corporate and contractual-corporate economic concentration transactions (Art.26-29 of the PCA) in the form of the total value of assets, total revenue and volume of the goods sales, the same criteria may be extended to the possibility to conduct mandatory preliminary state control over economic concentration in relation to all agreements between economic entities, at least, one of which falls under the specified signs.

The anticompetitive effect of corporate economic concentration transactions is more obvious: by changing the structural composition of the market, such transactions can lead to the formation of subjects that occupy a dominant position. Taking into account the existence of "the group of persons" in the Russian antimonopoly legislation, the consequence of corporate transactions may be the emergence of subjects of oligopoly and even the formation of a monopoly. In this regard, all corporate transactions aimed at creating new legal entities and consolidating existing legal entities should be subject to the preliminary state control over economic concentration in cases where their participants fall within the quantitative criteria for their capitalization (total assets and total revenue) established by law.

On the contrary, deals of a contractual and corporate nature aimed at redistributing corporate control cannot directly change either the market

structure (market concentration) or the market power degree of the firm as a whole. The influence of such transactions on the state of competition is of an indirect nature. Undoubtedly, the acquisition of corporate control may affect the content of the economic entities market policy but cannot change the structure of the market. A negative impact of such transactions on the state of competition is quite possible, especially taking into account the existence of "the group of persons" institution in the Russian antimonopoly legislation. It is no coincidence that there is a temporal criterion for transactions on corporate control redistribution in the European Union: such control is recognized essential for the state of competition only if it is carried out for a sufficiently long period of time - one year. Such an approach to the legal regulation shows that the notifying legal regime of the state control over economic concentration should be extended to transactions on the corporate control redistribution. This may involve a significant liberalization of the institution of the state control over economic concentration.

Thus, based on the above, three important conclusions can be drawn:

1) All contractual and corporate economic concentration transactions aimed at the market power dynamics must be subject to the mandatory preliminary control over economic concentration. It is necessary to establish unified quantitative criteria for the capitalization of economic entities, not only in relation to corporate (Art.27 and 28 of the PCA) but also in relation to contractual types of economic concentration (Art.35 of the PCA). In addition, with regard to agreements concluded by business entities, preliminary control is necessary in cases when the terms of these agreements imply the possibility or potentially lead to changes in the state of the market power, on the basis of signs of the dominant position emergence and also the consequences that are typical for the establishment of the *per se* conditions in them, as well as in cases of conditionally prohibited agreements. Corporate economic concentration transactions are subject to the state control over economic concentration only in cases

when they fall under the quantitative criteria regulated by Art.27-29 of the PCA. *De lege ferenda*, contractual and corporate grounds of the economic activity coordinating should also be subject to the preliminary state control over economic concentration. In particular, for example, the antimonopoly authority should be given the right of the state control over the formation and restructuring of self-regulating organizations which number of members meets certain quantitative criteria.

2) It is necessary to abolish the preliminary state control over economic concentration in relation to contractual and corporate forms of economic concentration aimed not at changing the market power or market structure, but at redistribution of corporate control and to carry out such control in the notification procedure, because this redistribution cannot have a direct effect on the state of competition. Such transactions should be subject to a notification state control over economic concentration, in analogy with the notification procedure for control over the transactions carried out within a group of persons, that is also one of the variants of contractual and corporate economic concentration.

3) Due to the uniformity of the objects of economic concentration transactions carried out by commercial and financial organizations, it is desirable to create a unified legal regime for corporate economic concentration transactions in both commercial and financial organizations, differentiating the threshold quantitative criteria for the capitalization of the transaction participants, which should be subject to the state control over economic concentration. At the same time, it is desirable to establish a unified legal regime of the dominance of the state control criteria which are regulated for financial organizations over the state control criteria established for commercial organizations.

CONTRACTUAL REGULATION OF CERTIFICATION OF GOODS (WORKS, SERVICES) IN CIVIL LAW

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Abstract
The article considers the issues of regulating relations in the field of certification of products (works, services) by a civil law contract. Special attention is paid to the content of the contract for the provision of certification services.

Keywords: certification, test, production (work, service), reimbursable services contracts, Civil Code of the Russian Federation

The process of certification (subjects, objects, stages, the sphere of evaluation, normative technical acts) is regulated by the legislation on technical regulation; however, in each specific case it implies signing a *civil law contract* between an applicant for certification and a certifying body. When defining the nature of such a contract, one should bear in mind, first, that the procedure of certification (testing) is characterized by the absence of any tangible outcome. In the procedure of certification (testing), what is "sold" is not the result but the actions which have led to it. Second, an expert in certification or a specialist in testing does not guarantee the positive result (issuing a compliance certificate or a protocol of testing confirming the safety or quality of the goods). Third, certification and testing are *professional* services, and their rendering implies special knowledge and skills. Certification and testing must be carried out by a qualified specialist accredited to carry out certification (testing). Taking the above into account, contracts signed for certification (testing) should be qualified as reimbursable services agreements (Ch.39 of the Civil Code of the Russian Federation) (further – the RF CC).[1]

[1] Civil Code of the Russian Federation. Part 2 / Federal Law of 26 January 1996 No.14-FZ (with amendments of 28 March 2017) // Collection of Legislation of the Russian Federation. 1996.

Such agreements have a *special subject composition. The contractor* is a certifying body – a juridical person or a sole proprietor which/who underwent the accreditation procedure. The object of certification should correspond to the sphere of accreditation of the contractor. *The customer* under the contract is an applicant – a juridical person or a sole proprietor - which produces and/or markets goods (works, services); it should be taken into account that *the circle of applicants* for certification of certain products (goods) (i.e. only a producer or both a producer and a seller) is stipulated by relevant technical regulation.

In many cases, a reimbursable services agreement is a *contract of record,* when a profit organization, in accordance with the type of its activity, undertakes to render the relevant service to anyone who applies for it (p.1 Art.426 of the RF CC).[2] As for Art.426 of the RF CC, the notion of "a profit organization", by a true remark of M.I. Braginskiy, comprises also the entrepreneurial activity of individuals. In other words, if the rules on contracts of record were applied to profit organizations only, these organizations would be placed in a disadvantageous position in competition with sole proprietors. Contracts of record include those in which the contractors are not all profit organizations but only those which, in accordance with the type of their activity, fulfill a certain public function.[3] Consequently, the definition of a certifying body contained in Art.2 of the Law on technical regulation does not contradict the provisions of Art.426 of the RF CC.

One of the main features of contracts of record, referred to in Art.426 of the RF CC, is their strictly limited *subject composition:* a consumer and a profit organization. However, Art.426 of the RF CC does not stipulate who can be recognized as a consumer. In particular, it does not specify if only an

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No.5. Art.410; 2017. No.14. Art.1998.

[2] Civil Code of the Russian Federation. Part 1 / Federal Law of 30 November 1994. No.51-FZ (with amendments of 28 March 2017) // Collection of Legislation of the Russian Federation. 1994. No.32. Art.3301; 2017. No.14. Art.1998.

[3] Braginskiy M.I., Vitryanskiy V.V. Contractual Law. Book 1: General Provisions. Moscow: Statut, 2005. P.254 - 255.

individual citizen may be a consumer or a juridical person as well. Thus, the application of Art.426 of the RF CC is possible regardless of who opposes a profit organization as a consumer – an individual citizen or a juridical person.[4] The above implies that the "consumers" of certification services may be both individual citizens (like sole proprietors) and profit organizations.

A contract for certification services is a *contract of adhesion* (Art.428 of the RF CC) due to the fact that an applicant signs a standard agreement, prepared in advance by a certifying body. In practice, a contract of adhesion became a tool popular with the participants of civil circulation due to the simplified procedure of forming contractual relationships; it is widely used in various spheres of activity. A peculiar feature of a contract of adhesion is that the acceding party either accepts the contract terms or refuses to sign it.

The standard contract signed with the applicant for certification must contain:

— indication of the technical regulation (standards, sets of rules, or other documents), the goods compliance with the ones to be tested;

— terms of rendering the certification services. As a rule, such terms differ depending on the specific features of the certified object, e.g. industrial-technical products, consumer goods, etc.;

— volume and price for the certification service. In the sphere of mandatory certification, the volume of this service depends on the certification scheme stipulated by the technical regulation, in the sphere of voluntary certification – on the certification scheme stated by the rules of the Voluntary Certification System. In other words, the contract value is established in terms of the assumed volume of certification.

According to p.1.1 of Art.434 of the RF CC, a contract may be signed in any form stipulated for transactions, provided the specific form for certain types of contracts is not stipulated by law. The freedom to choose a form of a transaction (contract) is a rule, and the stipulation of form is a lawful

[4] Ibid. P.253–254.

exception.[5] Legislation does not stipulate the requirement for a mandatory written form of a reimbursable services agreement. In practice, such agreements are made in the written form. They may be signed in, at least, *two ways*: by compiling a document expressing its content and signed by the persons making the transaction, or the persons duly authorized by them, and by exchanging letters, telegrams, telexes, faxes or other documents, including electronic ones, transmitted via communication channels, which documents allow to reliably establish that the document proceeds from the party of the contract.

A reimbursable certification services agreement may be concluded in other ways as well. In particular, an applicant may accept the new offer from a certifying body contained in its decision on application. The applicant must confirm in writing their consent to sign the agreement with the new (changed) terms. Otherwise, such an agreement will be deemed not concluded.[6]

When designing such a form of application which would provide for all necessary terms for signing the contract, the said contractual relations may occur after unconditional acceptance of such an offer by a certifying body. At that stage of signing the contract, an applicant (offeror) must establish preliminary contacts with the certifying body in order to clarify the content and details of the would-be contract.[7]

The offer for signing the contract on certification is *the application for certification,* which must contain:

— the name and juridical address of the company – a producer (seller), or the sole proprietor – a producer (seller);

— the offer to carry out the product certification;

— information about the product to be certified: its name, type, brand. Also: indication of the standard, technical conditions, design

[5] Braginskiy M.I., Vitryanskiy V.V. Ibid. P.342.

[6] Belykh V.S. Grazhdansko-pravovoe obespechenie kachestva produktsii, rabot i uslug [Provision of the Quality of Products, Works and Services under Civil Law]. Collection of scien.works / ed. by O.A. Gerasimov (PhD (Law)). Yekaterinburg: Business, Management and Law, 2007. P.146.

[7] Ibid. P.146.

documentation, a model, according to which it is produced. Indication of a “serial production” or “lot” or “one-off”, the code of the product by the All-Russian Product Classifier, and for the imported and exported goods – the code of the product by the Classifier of Goods Nomenclature of external economic activity of the CIS countries;

— title and identification of normative documents, for the compliance to which the product is to be tested;

— number of certification scheme;

— commitment to observe the rules of certification;

— additional information: external identifying features of the product (a type of tare, packages, data imprinted on it, etc.).

If the application for certification is submitted by a seller (supplier) who is not a producer, they, as a rule, must include, alongside with the above mentioned data, information on the documents confirming the origin of the product, on the contract (delivery contract), on transportation documents.

When signing the above contract, the acceptance may be the *decision of the certifying body on the application.* However, such a decision is not viewed in most cases as an acceptance of the offer to sign the contract. “First, in its decision (reply) the relevant body often stipulates other conditions of performing the certification works (for instance, according to a certification scheme). Second, the decision stipulates the price of the contract or the order of its establishing. Consequently, the decision of the certifying body, which contains amendments and additions to the applicant’s offer, turns it (the decision) into a new offer”.[8] For instance, the certifying body is entitled to require information from the applicant about the raw products, materials, and components.

The decision on the application must contain *all basic terms of certification*: information about the applicant and the certifying body, name of the product to be tested, requirements according to which

[8] Ibid. P.145.

certification is to be performed, number of the certification scheme. Executing the inspection control over the certified products is, in most cases, formalized as a separate contract.

The decision on the application is accompanied by a list of testing laboratories (centers) where the testing can be made, and a list of bodies certifying production or quality systems, if the certification scheme implies such evaluation. Acceptance may be expressed by a fax message, by telegraph or in other ways.

The offer received by the addressee, according to the general rule of Art.436 of the RF CC, cannot be withdrawn during the term stipulated for its acceptance, unless otherwise agreed. An offer, a law, other legal acts may stipulate, alongside with the term of the offer acceptance, the term of its consideration. Technical regulations provide that the certifying bodies shall inform the applicant of their decision not later than one month after receiving the application. During consideration of the application, the certifying bodies *examine* it as to sufficiency of the information contained in it, its compliance with the requirements of the technical regulation and the related standards. In case of *positive results* of the expert examination of the application for certification, the certifying body in its decision states the terms of certification and the order (program) of certification tests. In case of *negative results* of the expert examination of the application, the applicant is sent a decision on refusal of certification with the well-reasoned explanation. Technical regulations may stipulate other features related to considering the applications for certification.

A reimbursable certification services agreement is deemed *concluded* at the moment when the certifying body receives the acceptance of the offer, provided the acceptance is received within the period stipulated in the offer, and in case of the absence of the acceptance period – before the end of the period stipulated by law or other legal acts. If an offer, a law, other legal acts stipulate, alongside with the term of the offer acceptance, the term of its consideration, and the notification of the acceptance is

forwarded within the stated period; the contract shall be deemed concluded even if the notification of the acceptance is received late. The issues connected to the *changing* and *termination* of the contracts for certification services are regulated by general norms of the RF CC on changing and termination of liabilities, taking into account the rules of the Code on the features of changing and termination of contracts (Art.450–453 the RF CC). At request of *one party* a contract may be changed or canceled *per curia,* provided the contract is significantly violated by the other party (p.2.1 of Art.450 the RF CC). For instance, a violation by a certifying body of the established order of product testing, which leads to unreliable results of certification, may be qualified as a significant violation of the contract.

Just as in relation to the absolute majority of reimbursable civil law agreements, an essential element of the reimbursable services agreement is its *object.* The object of the contract is collection and examination of the necessary documents, including the analysis of a testing protocol, drawing up of a conclusion by an expert in certification, making a decision on issuing a compliance certificate.

An essential feature of the object of the contract under consideration is the *quality of the rendered services.* Art.39 of the RF CC contains no rules on the quality of the rendered services. Taking into account the provisions of Art.783 of the RF CC stipulating that general provisions of a work contract may be applied to a reimbursable services agreement, when solving the issue of the services quality one may be guided by Art.721 of the RF CC "*Quality of works*". The quality of a service rendered by a certifying body must comply with the contract terms. A peculiar feature of rendering services in the sphere of mandatory certification is that the legislation on technical regulation stipulates special requirements for certification.

A certifying body must transfer *information* to the applicant concerning the rendered service. This obligation has a number of features:

— under Art.726 of the RF CC, a certifying body must transfer information to the applicant concerning the results of certification;

— without the applicant's consent, a certifying body may not transfer to the third parties information about new solutions and technical knowledge, including those not protected by law, as well as information in relation to which its owner establishes the *trade secret regime* (Art.727 of the RF CC). The parties are entitled to stipulate in the contract the order and conditions of using such information;

— at request of the applicant, the certifying body must indicate in the contract the number of the accreditation certificate, its term of validity, title of the issuing body.

Art.780 of the RF CC stipulates *the main obligation of the contractor*: "the contractor must render the services in person". However, this norm is non-mandatory and demonstrates certain specificities. On the one hand, a contractor not only undertakes, but is obliged to render the services in person, unless otherwise specified in the contract. On the other hand, Art.780 of the RF CC is an exception from the general rule on discharge of obligations, which stipulates that a debtor may impose the discharge of an obligation onto a third party, provided, however, that the law, other legal acts, obligation terms or its essence stipulate the obligation of its personal execution (p.3 of Art.313 of the RF CC). It often appears that for the applicant, the experience, professional kills and reputation of the contractor are crucial factors in the choice of a certifying body. The contract may stipulate the possibility to appoint specialists – experts in certification. An applicant, when signing a contract with a certifying body, may insist on the discharge of obligations by a certain expert or agree to the discharge by any qualified specialist at discretion of the head of the certifying body.

The RF CC contains no specific rules on the *period* of action of a reimbursable services agreement. As it is known, a period is one of the main contractual terms. It determines the temporal frameworks of the very contract existence and, within these frameworks, the moments

(periods) when the discharge of obligations by the contracting parties must take place.[9] In the certification contract, it is reasonable to stipulate the *initial and final dates* of rendering the service; one may also stipulate the dates of completion of certain types (stages) of rendering the service (intermediary dates, Art.708 of the RF CC). The nature of Art.708 of the RF CC implies that Art.314 of the RF CC - which permits the "recovery" of a contract containing no time constraints - cannot be applied to a reimbursable services agreement.

The basic liability of the applicant under the reimbursable certification services agreement includes the *payment* for the rendered service in the term and order stipulated by the agreement (p.1 Art.781 of the RF CC). The price is stipulated in the agreement. Federal Law of 27 December 2002 No.184-FZ "On Technical Regulation" (further – Law on Technical Regulation)[10] contains the norm (p.4 Art.23), according to which the cost of the works for mandatory confirmation of the product compliance is stated regardless of the country and/or place of its origin and of the persons acting as applicants. When negotiating the price, one may be guided by Certification Rules "Compensating the Works on Goods and Services Certification" adopted by Decree of the Russian State Standard Agency of 23 August 1999 No.44.[11] This document stipulates the general rules and the order of payments for the works on mandatory certification of products within the Russian State Standard System (GOST R), including:

– a formula for calculating the cost of works on certification;

– a formula for calculating the expenditures of the certifying body for mandatory certification of a specific product;

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[9] Braginskiy M.I., Vitryanskiy V.V. Ibid. P.318.

[10] Federal Law of 27 December 2002 No.184-FZ "On Technical Regulation" (with amendments of 1 July 2017) // Collection of Legislation of the Russian Federation. 2002. No.52 (part 1). Art.5140; 2017. No.27. Art.3938.

[11] Decree of the Russian State Standard Agency of 23 August 1999 No.44 "On Adoption of the Certification Rules "Compensating the Works on Goods and Services Certification" (with amendments of 5 July 2002) // Rossiiskaia Gazeta. 2000. 17 February; 2002. 18 September.

– a formula for calculating the cost of notarization of copies of compliance certificates;

– titles and maximum norms of the cost of works which can be performed during the mandatory certification of exported goods.

A person or persons, who created a system of voluntary certification, stipulate the order of payment for the works on voluntary certification (p.2 clause 2 Art.21 of the Law on Technical Regulation).

Thus, in a reimbursable certification services agreement the price is not directly stipulated by legislative acts. Certifying bodies have documents like pricelists, tariffs, etc. The price may be set by the cost estimation (fixed or approximate) (Art.709 of the RF CC). If the contract does not stipulate the price, the latter must be established in accordance with clause 3 Art.424 of the RF CC: the contract execution must be compensated at the price which is usually charged for the similar services under comparable circumstances (p.1 Art.709 of the RF CC).

A contract may stipulate the liability for the customer to render *assistance* to the contractor in rendering the service, under p.1 Art.718 of the RF CC, which is non-mandatory. The presence of these provisions in the contract will promote the due execution of certification and, consequently, making a more objective decision on issuing the certificate of compliance.

Violation of a reimbursable certification services agreement results in *civil law (contractual) liability* for the party which violates its terms. The cases of non-compliance or improper compliance with the contract are regulated in accordance with the general rules of the RF CC on the grounds for liability for breach of obligation (Art.401). The Civil Code (Art.39) does not contain any special liability provisions related to the reimbursable services agreement.

TECHNICAL REGULATIONS ON THE SAFETY OF CHEMICAL PRODUCTS IN THE SYSTEM OF LEGAL ARRANGEMENTS FOR CHEMICAL SAFETY OF THE RUSSIAN FEDERATION

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Abstract
The article examines some aspects of the legal regulation of issues concerning the chemical safety protection of the Russian Federation. It reveals the factors decreasing the level of chemical safety of our country, as well as legal arrangements which can help remove the negative effect of these factors, or at least substantially reduce them. Special attention is paid to the role that two regulatory legal acts, which have been currently adopted, but have not come into force yet, can play in solving the above-mentioned issues. They are technical regulations on safety of chemical products passed by Resolution of the Government of the Russian Federation No.1019 of October 7, 2016 and technical regulations of the Eurasian Economic Union TR EAEU 041/2017 *On Safety of Chemical Products*. There is an analysis of the technical regulation measures introduced by the specified technical regulations — identification of chemical products, classification and registration of chemical substances, etc. There are identified factors, which can cause efficiency reduction of the technical regulation as one of the tools to ensure chemical safety of the Russian Federation, and also possible ways and methods to eliminate them.

Keywords: chemical safety, technical regulation, the Eurasian Economic Union, classification of chemical products, registration of chemical substances.

The problem of ensuring chemical safety is quite relevant for the Russian Federation. Over 10 thousand chemically hazardous substances pertaining to the fuel and energy sector, non-ferrous, iron and steel industry, chemical, pulp and paper, food and other branches of industry and agriculture currently function in the country. Most of these facilities not only have great economic, defense and social significance for the country, but also

pose a potential danger to the health and life of people: according to the Federal Service for Supervision over Customer Rights Protection and Human Welfare, the approximate number of population with the pronounced effect of complex chemical stress on the state of health determined by the chemical contamination of food, drinking water, atmospheric air and soil, was 89.08 million people[1] in 2015. Chemically hazardous facilities have also a negative environmental impact. As reported by the Ministry of Natural Resources of the Russian Federation in 2015, the chemical productions accounted for 6% of the total number of contaminants emitted into the atmospheric air by processing enterprises; over 20% of the quantity of the polluted water discharged into water bodies by such enterprises; about 6% of the total waste generation of hazard class 1 and 2[2].

Despite this high significance of the problem of chemical safety protection of the Russian Federation, the system of legal regulation of the indicated concerns is at the stage of development. The key element of this system today is the Fundamentals of the State Policy of Chemical and Biological Safety of the Russian Federation for the period till 2025 and long-term prospects[3] (hereinafter referred to as the Fundamentals of the State Policy). According to this document, the insufficiently high level of chemical safety in the country is determined by several groups of factors. In particular, the following ones can be pointed out among them:

— use of technologies that are imperfect in terms of chemical safety protection in the industry combined with a considerable part of chemically hazardous facilities is located in cities with the population over 100 thousand people. In particular, the cities that are overloaded with the chemical profile productions include cities like Dzerzhynsk (population

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[1] State Report on the Environmental Condition and Protection of the Russian Federation in 2015. – Moscow: Ministry of the Natural Resources of the Russian Federation; NIA-Priroda. – 2016. P.242.

[2] Ibid. P.213

[3] Approved by the President of the Russian Federation V.V. Putin on 1 November 2013. No.Pr-573 // Reference Legal System ConsultantPlus.

over 230 thousand people), Novocheboksarsk (over 120 thousand people), Berezniki (145 thousand people), Volgograd (over 1 million people), Nizhnekamsk (over 230 thousand people), Sterlitamak (almost 280 thousand people), Nevinnomyssk (about 120 thousand people), Volzhsky (over 320 thousand people), Kemerovo (over 550 thousand people), Cherepovets (above 300 thousand people);

— an insufficiently high level of emergency stability of chemically hazardous industrial facilities (see Fig.1), which is determined, inter alia, by increasing wear and tear of the equipment and reduction of the qualification level of the personnel;

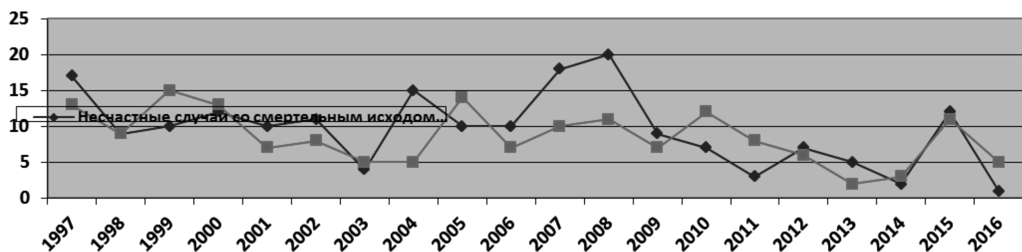

Fig.1. Number of fatal accidents at potential chemically hazardous industrial facilities (according to the Federal Service for Environmental, Technological and Nuclear Supervision)

— a large amount of decommissioned chemically hazardous industrial facilities with near-limit or completely depleted technical and technological resources, and also territories polluted as a result of previous business activities, combined with accumulation of hazardous chemically stable compounds in the environment;

— globalization of commerce and a possibility of import of chemically hazardous substances and products made using them.

Minimization of the negative effect of the specified factors on the chemical safety of the Russian Federation is regulated by standard legal acts of various industry affiliations. Thus, for example, the issues of preventing the negative impact of hazardous chemical factors on life and

health of people in the process of their working activity are regulated by acts of labor legislation, legislation on industrial safety of hazardous industrial facilities, sanitary and epidemiological welfare of the population, etc. Issues of emergency stability of chemically hazardous industrial facilities and other facilities are regulated, primarily, by pieces of legislation on industrial safety of hazardous industrial facilities and legislation on protection of the population and territories from natural and man-caused emergency situations. The issues of minimization of a negative impact of hazardous chemical factors on the environment are regulated by the environment protection legislation. However, such "diversity" in some cases leads to collisions and discrepancies between provisions of the acts of different industrial affiliation regulating a similar circle of relations, on the one hand, and legislative gaps, on the other. For this reason, increasing of the congruity level of regulatory legal acts regulating various aspects of the chemical safety protection is a relevant problem.

The Fundamentals of the State Policy refer to the development and commissioning of fundamentally new classes of chemicals having an understudied impact on the human health and environment as another essential factor degrading the level of the chemical safety of the Russian Federation. Classification of chemical substances and their mixtures by a degree of their hazard for the human health and environment and their registration should become one of the key areas of activity intended to mitigate the negative impact of this factor.

There are several regulatory legal acts governing the mentioned issues in the territory of the Russian Federation. The first to mention is Decision of the Government of the Russian Federation No.609 of 20 July 2013 "On Maintenance of the Federal Register of Potentially Hazardous Chemical and Biological Substances, Amending and Invalidating Some Acts of the Government of the Russian Federation"[4]. This document approves the provision on maintenance of the Federal Register of potentially hazardous

[4] Collection of Legislation of the Russian Federation. 2013. No.30 (Part 2). P.4118.

chemical and biological substances, which is a state information resource created for the purpose of implementing state international treaties of the Russian Federation in chemical safety, including the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of 10 September 1998[5], and the requirements of the legislation of the Russian Federation.

The Register contains information on the hazard of chemical and biological substances, including the data on:

a) identification of a chemical substance: its general name, its chemical name according to the internationally recognized nomenclature, trade names and names of compositions, code numbers;

b) the application area of the substance;

c) assessment of hazards of substances for human health and environment (with the account of their physical and chemical, toxicological and ecotoxicological properties);

d) establishment of hygienic and other rates of the content of substances in environmental objects, including the human habitat;

e) developed protective measures against the hazardous effect of substances on the human health and environment, including the conditions of their disposal and destruction.

The information contained in the Register can be used both for carrying out the federal state sanitary, epidemiological and environmental oversight, and the state registration of potentially hazardous chemical and biological substances and products made on their basis.

The issues of classification and registration of chemical substances are also a subject of the legislative control of technical regulations on safety of chemical products approved by Resolution of the Government of the Russian Federation No.1019[6] of 7 October 2016 (hereinafter referred to as the Russian Technical Regulations), and technical regulations of the Eurasian Economic Union TR EAEU 041/2017 “On Safety of Chemical

[5] Collection of Legislation of the Russian Federation 2011. No.36. P.5125.

[6] Collection of Legislation of the Russian Federation. 2016. No.42. P.5936.

Products", adopted by Decision of the Council of the Eurasian Economic Commission No.19 of 3 March 2017 "On Technical Regulation of the Eurasian Economic Union on Safety of Chemical Products"[7] (hereinafter referred to as the technical regulations of the EAEU)[8]. They establish:

— the need and rules of classifying chemical products by hazardous properties. Such a classification is done by the manufacturer (a person authorized by the manufacturer) or the importer of the product on the basis of the data on hazardous properties of chemical substances and mixtures contained in the register of chemical substances and mixtures, or received as a result of research (tests) for compliance with the criteria specified in the standards included in the list of the standardization documents, voluntary application of which results in ensured compliance with the requirements of the relevant Technical Regulations. The defined hazard class (subclass, type) of chemical products shall be specified by the manufacturer (a person authorized by the manufacturer) or importer of this product in the safety data-sheet.

Combining the provisions of the two technical regulations under consideration, let us point out their certain inconsistency. According to the technical regulations of the EAEU, chemical products should be classified in accordance with the List of International and Regional (interstate) Standards, and in case of their absence – the national (state) standards. The Russian law of technical regulating provides for the possibility of including not only national standards and codes of the Russian Federation, international and regional standards and codes, but also standards and codes of foreign countries, including countries – members of the European Union in the List of Standardization Documents. As a result, their voluntary use ensures compliance with the requirements of the accepted technical regulations. The only limitation is that these acts have to be registered in the Federal Information File of Technical Regulations and Standards. Therefore, the Russian lawmaker provides

[7] Official site of the Eurasian Economic Union http://www.eaeunion.org/ 18 May 2017

[8] At present, no technical regulations have come into force.

economic subjects with a possibility of being guided by provisions of the vastest range of standard legal acts, regulatory and technical documents to meet the requirements of the technical regulations.

— Requirements for marking and safety data-sheet of the chemical products.

— Procedures for notification of new chemical substances. The term "notification" means a procedure for entering information about new chemical substances into the register of chemical substances and mixtures performed by authorized bodies of the EAEU member countries. In the Russian Federation, such a body (federal executive body) will be assigned by the Government of the Russian Federation.

— Rules for account and permit state registration of chemical products as one of the forms of assessment of its compliance with the requirements of the technical regulations. The account state registration of chemical products shall be performed only in case when information about the product is entered into the register of chemical substances and mixtures, it does not include prohibited and (or) limited use chemical substances and mixtures included in the register of chemical substances and mixtures, or in case the limited use substances are included in it in quantities not exceeding the limit values established by technical regulations. In turn, the new chemical products, as well as chemical products, which contain limited use substances and mixtures in concentrations exceeding the maximum allowable ones as per technical regulations, are to undergo the permit state registration.

As it is known, Regulation of the European Union No.1907/2006 concerning the rules of registration, evaluation, authorization and restriction of chemicals[9] (hereinafter referred to as the REACH) had great influence on the contents of the drafts of the specified technical regulations,

[9] Regulation (EC) No.1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) // Official Journal of the European Union L 396.

in particular, the Russian Technical Regulations[10] in the process of their development. Thus, for instance, the developers of the draft Russian Technical Regulations proposed introducing a system for registration of chemical substances, which means "according to Article 4 of the Regulations, **all** chemical elements and their compounds included in the chemical products", similar to the registration system in conformity with the REACH, without explaining, however, how this registration should correlate with the state registration system for potentially hazardous chemical and biological substances that was in effect at that time[11].

Moreover, the considered draft technical regulations proposed creation of a special federal executive body charged with functions to register chemical products - Russian Chemical Agency, an analogue to the European Chemical Agency (ECHA). Creation of a Risk Assessment Council and a Social Economic Analysis Council within this body was proposed. However, the need to create this body itself, and its councils was not justified in the draft law and attached documents; no functions or authorities of the specified councils were defined. All this allows to say that an attempt was made to borrow legal norms of the international legal act – the REACH, which is in effect only in the territory of the European Union member countries — without adapting them to the Russian reality when developing the draft Russian Technical Regulations (in the form of a federal law). Obviously, such an approach is not only unconstructive, but also contradicts the constitutional provisions of the Russian Federation. Therefore, at

[10] The original text of the draft technical regulations that were supposed to be adopted in the form of a federal law, see: http://docs.cntd.ru/document/1200057769 . An analysis of some provisions of the specified draft law is provided in the Article by Vlada Lukyanova. Technical Regulations on Safety of Chemical Products ... – Safety or New Administrative Barriers//Information Bulletin of CNTD Regulatory Documentation Center, 2007, No.6.

[11] See: Resolution of the Government of the Russian Federation No.869 of November 12, 1992 // Collection of Legislation of the Russian Federation. 1992. No.20. Art.1669. The document has lost its force in connection with acceptance of the above-mentioned resolution of the Government of the Russian Federation No.609 of July 20, 2013 "On Introduction of the Federal Register of Potentially Hazardous Chemical and Biological Substances, Amending and Invalidating Certain Acts of the Government of the Russian Federation //Collection of Legislation of the Russian Federation 2013, No.30 (Part 2). Art.4118.

present, the Russian Technical Regulations (technical regulations "On Safety of Chemical Products", adopted by Resolution of the Government of the Russian Federation No.1019 of 7 October 2016) do not consider a creation of new federal executive bodies.

However, other measures introduced both by the Russian Technical Regulations, and the EAEU Technical Regulations, — registration and classification of chemical products, notification of chemical substances, etc. — are much like the technical regulation measures established by the REACH. However, the latter is known to be aimed not only at preventing the negative effect of chemical products on the environment and human health, but also protecting the European market, increasing competitiveness and innovative potential of the European industry. Therefore, although *de jure* the requirements of the REACH for foreign manufacturers are identical to the requirements for manufacturers in the EU, *de facto* foreign manufacturers are put in less profitable competitive conditions. As for the advantages granted to the EU resident companies, we may name:

— a possibility of using components that have already been registered in the EU;

— no requirement for registration in regard to polymers of a single supply line (such a requirement is laid to foreign manufacturers);

— a disadvantageous position of foreign manufacturers in the SIEF (Substance Information Exchange Forum) in the process of joint application of data by applicants on the same chemical substance;

— inability of foreign manufacturers to register chemicals on their own (according to Clause 1, Article 8 of the REACH, documents for registration of substances imported to the EU shall be submitted either by the importer being a EU resident, which becomes the owner of the registration, or the only representative specially founded in the EU to perform the required registration of the substance imported to the EU).

In this case, the REACH proceeds not so much from the hazardous chemical substance criteria, as the quantitative criteria. Thus, substances

posing no risk to health, imported to the EU countries in the amount of 1,000 and more tons per year shall be registered under the same procedure as the so-called CMR - substances (carcinogenic, mutagenic and toxic for reproduction). Considering the above, one cannot disagree with the researchers[12] who believe that the REACH is a non-tariff barrier having a negative impact on the export to the EU (including Russian) and capable of expenditures and prices growth, and also distortion of the competition conditions in the EU market.

In its own turn, the Russian Technical Regulations and EAEU Technical Regulations do not contain provisions discriminating manufacturers of chemical products. Moreover, legal acts defining the general principles of technical regulation in the corresponding territory (Federal Law No.184-FZ of 27 December 2002 "On Technical Regulation, Treaty on the Eurasian Economic Union") consolidating the principle of uniformity of using the requirements of technical regulations regardless of the types and (or) particulars of transactions.

Another considerable difference of the REACH and the technical regulations in question is the understanding of "chemical products" established by them. As it is known, the REACH must ensure a high level of protection of human health and environment, and also easy motion of substances separately, in mixture and in products...[13]. This is why its requirements apply to products not only in chemical industry, but also metallurgy, machine engineering, manufacture of building materials, pulp and paper industry, electronics, etc. Thus, for instance, only in January 2011, products of 20 various titles from wrist watches to consumer goods[14] were recognized non-qualifying to the requirements of the REACH.

[12] D.O. Zvegintseva REACH in the context of the WTO: Legitimacy and Some Lessons for Russia // The WTO Law. 2015. No.1. P.31 - 38.

[13] Clause 1 of the REACH preamble.

[14] See: Legal Problems of Interstate Association Formation (Taking the Example of the Free Trade Area and the Eurasian Economic Community Customs Union): monograph / editor-in-chief V.Yu. Lukyanova. — Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation; Ankil, 2012. P.163-166.

Another approach to definition of the notion “chemical products” is fixed by the considered technical regulations. According to the specified documents, the chemical product is a “chemical substance or mixture”. In this case, the “mixture” means “mixture or solution consisting of two or more chemical substances, in which these substances do not interact with each other”[15]. Chemical substance means “chemical elements and (or) their compounds in the natural state or produced as a result of any production process, including any additives necessary to ensure stability, and any admixtures determined by the chemical product manufacturing process, excluding any solvent, which can be separated without destabilization of chemical substance or change of its composition[16]. Then, there is a specification: chemical substances include chemical products, in which chemical substance is present in concentration of 80 percent (by weight) and more. In this case, the remaining 20 percent (by weight) and less are considered to be admixtures and (or) additives.

However, this definition, even with account of the specification, as well as other norms of the considered technical regulations do not allow to definitely indicate which product exactly the requirements of the considered technical regulations apply to, and which not[17]. What exactly falls within the definition of chemical products? Only “individual”, separate substances, or products made using these substances? Let us make an example. It has already been noted above that in January 2011 some kinds of children’s toys were recognized non-compliant with the requirements of the REACH. They were a set of 3 balls (red, yellow and green) under BMFO trade mark.

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[15] Paragraph 36, Clause 6 of the Russian Technical Regulations, paragraph 33, clause 4 of the Technical Regulations of EAEU.

[16] Paragraph 37, Clause 6 of the Russian Technical Regulations, paragraph 34, clause 4 of the Technical Regulations of the EAEU.

[17] In accordance with clause 5 of the Russian Technical Regulations, clause 3 of the Technical Regulations of the EAEU, the object of the technical regulation, the corresponding technical regulations apply to, is all chemical products released into circulation in the territory of the Russian Federation, the customs territory of the EAEU accordingly. The exceptions are certain types of chemical products, the comprehensive list of which is provided in Annex 1 to the relevant technical regulations.

The cause of the discrepancy is presence of di-2-ethylhexyl phthalate (DEHP) in the material, which the balls were made of. The question arises: are such products (the balls) an object of the technical regulations that the Russian Technical Regulations and (or) the Technical Regulations of the EAEU on Safety of Chemical Products will cover[18]? Or will only the material they (the balls) are made of be such an object? And what exactly is the product, the safety data-sheet must be issued for – the ball or the material it is made of? Neither provisions of the Russian Technical Regulations, nor provisions of the Technical Regulations of the EAEU give an unambiguous answer to these questions.

It is obvious that such legal and linguistic uncertainty in the provisions of the technical regulations creates favorable possibilities for abuse both on the part of the state bodies, and on the part of unfair manufacturers of products, and can have a negative impact on the state of chemical safety of the Russian Federation. It is not accidental that the procedure for anti-corruption expertise of regulatory legal acts and draft regulatory legal acts approved by Resolution of the Government of the Russian Federation No.96 of 26 February 2010 "On Anticorruption Expertise of Regulatory Legal Acts and Draft Regulatory Legal Acts"[19] classifies the legal-linguistic uncertainty as one of the most significant corruptiogenic factors.

At the same time, there are other, more definitive interpretations of the notion "chemical products" on the Eurasian space. Thus, for instance, Law of the Republic of Kazakhstan No.302-III ZPK of 21 July 2007 "On Safety of Chemical Products"[20] (clause 8 of Article 1) explains this term as "products that passed all technological stages of recovery from natural resources and (or) transformation of the raw material using chemical reactions and are suitable to meet the necessities of people or production in the form, in which it was made by the manufacturer. Interstate standard GOST 30333-2007

[18] The fact that these items must meet the requirements of the Technical Regulations of the Customs Union TR CU 008/2011 "On Safety of Toys" is beyond doubt.

[19] Collection of Legislation of the Russian Federation 2010. No.10. Art.1084.

[20] Kazakhstanskaya Pravda of July 28, 2007.

Safety Data-sheet of Chemical Products. General Requirements, adopted by the Interstate Council of the CIS for Standardization, Metrology and Certification (Protocol No.32 of 24 October 2007)[21] interprets chemical products as "a chemical substance, mixture of substances or material" explaining that the material is "a product of industrial treatment (processing) of chemical substance or mixture of substances intended for production (manufacture) of other materials, products and items, and also used for operation of the products".

It seems that clearer understanding of chemical products may find its reflection in legal acts, which have to be adopted before the considered technical regulations – Russian Technical Regulations and Technical Regulations of the EAEU - come into force.

Effectiveness of technical regulations as one of the tools to ensure chemical safety of the Russian Federation can also decrease instability of legal regulation of the specified issues. As it is known, in accordance with the above-mentioned resolution of the Government No.1019 of the Russian Federation of 7 October 2016, the Russian Technical Regulations are to come into effect on 1 July 2021. Twenty four months before that, i.e. not later than 1 July 2019, the Ministry of Industry and Trade of the Russian Federation must prepare and present draft resolutions of the Government of the Russian Federation of the procedure for notification of new chemical substances and procedure for generation and maintenance of the register of chemical substances and mixtures to the Government of the Russian Federation according to the established procedure as agreed with the concerned federal executive bodies. Not later than 30 days before the specified technical regulations come into force, a list of documents on standardization must be developed, approved and officially published. Voluntary application of them results in ensured compliance with the requirements of the technical regulations, and also classification of chemical products.

[21] Interstate Standard GOST 30333-2007 Safety Data-Sheet of Chemical Products. General Requirements. – Moscow, Standartinform, 2008.

In turn, technical regulations of the EAEU are to come into force on June 2, 2021 (provided that the Eurasian Economic Commission in association with the governments of the EAEU member countries will develop and approve the Procedure for generation and maintenance of the register of chemical substances and mixtures and Procedure for notification of new chemical substances by December 1, 2018)[22]. Not later than 180 calendar days before the technical regulations of the EAEU enter into force[23], that is not later than December 1, 2020, the board of the Eurasian Economic Commission must accept a list of international and regional (interstate) standards, and in case of their absence — national (state) standards. Their voluntary use should result in ensuring compliance with the requirements of the technical regulations.

It follows from the provisions of the Treaty on the European Economic Union of 29 May 2014[24] (Clause 3 of the Protocol on Technical Regulation within the Eurasian Economic Union (Annex No.9 to the Agreement), Clause 3 of Article 53 of the Agreement) that the norms of legislation of the EAEU member countries are only applicable to the technical regulation objects, in relation to which the Technical Regulations of the Union have not entered into force. From the date the Technical Regulations of the Union come into force, the relevant mandatory requirements for the products act in the territories of the member

[22] Clauses 2, 4 of Decision of the Council of the European Economic Commission No.19 of March 3, 2017 “On Technical Regulations of the Eurasian Economic Union on Safety of Chemical Products”.

[23] Decision of the Council of the Eurasian Economic Commission No.161 of October 18, 2016 “On the Procedure for Development and Adoption of the List of International and Regional (Interstate) Standards”, and in case of their absence – national (state) standards, the voluntary use of which results in ensuring the compliance with the requirements of the Technical Regulations of the Eurasian Economic Union, and the list of international and regional (interstate) standards, and in case of their absence – national (state) standards containing rules and methods for study (tests) and measurements, including sampling rules required for use and meeting the requirements of the Technical Regulations of the Eurasian Economic Union and assessment of the technical regulation object compliance //Official site of the European Economic Council http://eaeunion.org/, 16 March 2017.

[24] Official site of the European Economic Commission: http://www.eurasiancommission.org/ June 5, 2014.

countries only in the part defined by the transitional provisions. And they shall not be used for release of the product into circulation, assessment of compliance of the objects of technical regulation, state control (oversight) of compliance with the requirements of the Technical Regulations of the Union from the completion date of the transitional provisions defined by the Technical Regulations of the Union and (or) the act of the Commission. This means that the Russian Technical Regulations may never come into force, as it will be deemed invalid from 2 June 2021. Such situations do not encourage the increase of predictability and efficiency of the regulation of the state economic activity, including the activity on provision of chemical safety of the Russian Federation, and create a situation of legislative uncertainty. Possible differences in the lists of acts make the uncertainty even worse. First of all, these are documents on standardization, which the economic subjects can follow to meet the requirements of the Russian Technical Regulations and the Technical Regulations of the EAEU discussed above. This is determined by a long — at least 6 months — transition period of adopting any technical regulations established not only for the state government authorities of the Russian Federation and (or) governing bodies of the Eurasian Economic Union to have enough time to adopt the acts necessary for fulfilment of the requirements of the corresponding technical regulations, but also for the economic subjects to have time to accommodate to the work in these conditions. It is not clear so far, provisions of which acts the subjects whose activity is to a certain extent connected with the chemical product safety issues should accommodate to in their work.

In general, the performed analysis shows that increase of the chemical safety level in the modern conditions of development of the Russian society requires further systematization of the Russian Law regulating various aspects of the chemical safety. Increase of its scientific justification and internal consistency is required. For this purpose, in order to execute the

provisions of the state policy basics, the Ministry of Healthcare of the Russian Federation is developing a draft federal law on chemical safety. The mentioned draft law was brought forward for public discussion in January 2017 (see the Federal portal of draft regulatory legal acts (http://regulation.gov.ru/projects).

This draft law not only forms the term basis for the legal regulation of relations in chemical safety, but also defines the authorities of all concerned persons in the chemical safety area: state government authorities of the Russian Federation and state government authorities of the constituents of the Russian Federation, and also local self-governing bodies. It fixes rights and obligations of legal persons, individual entrepreneurs and citizens. Besides, it defines a set of measures to ensure chemical safety, a mechanism for implementation of the state policy and state governance, including oversight (control), and also directions of international cooperation and responsibility for violation of the law concerning chemical safety. In the meantime, we have to admit that the developed draft law is much of a framework, and a considerable number of its standards are for reference.

Increase of the consistency level of the lawmaking processes in the mentioned sphere of the Russian Federation and within interstate integration associations and international organizations where the Russian Federation is a party should become an equally important area for efficiency increase of the chemical safety activities. Moreover, participation of our country in lawmaking processes at the supranational and international level should be based on models of integration into interstate and international systems for ensuring chemical safety meeting the interests of the Russian Federation. Only such an approach will allow the Russian Federation to ensure chemical safety in its territory without creation of excessive administrative barriers for performance of economic and other activities.

LEGAL ISSUES OF ENSURING ENVIRONMENTAL SECURITY IN THE RUSSIAN FEDERATION: CROSS-SECTORAL ASPECTS

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Abstract
The article focuses on cross-sectoral aspects of ensuring environmental security, examining them in more detail from the viewpoint of administrative and criminal law, and particularly on the problem of ensuring environmental security in an industry such as transport infrastructure.

Keywords: environmental law, environmental security, cross-sectoral aspects, administrative law, criminal law, ecological security in transport

With every passing day, issues of environmental protection and ensuring environmental security in the Russian Federation are becoming more and more urgent. The year of 2017 was even declared the Year of Ecology in Russia by the President of the Russian Federation in his Address to the Federal Assembly (on 10 December 2016)[1].

In accordance with the Foundations of the State Policy in the Field of Environmental Development of the Russian Federation for the period till 2030, approved by the President of the Russian Federation on 30 April 2012, the elaboration of state policy foundations in the area of environmental development in Russia is accounted for by the need to ensure environmental

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[1] Parlamentskaia gazeta [Parliamentary Newspaper] - 2016. No.45. – 2 August.

security in the process of economic modernization and innovation development.

These Foundations define the strategic goal and main objectives of the state in the area of environmental protection and ensuring environmental security as well as provide for mechanisms for their implementation. In accordance with clause 11 of the Foundations, the main directions of ensuring environmental security include gradual reduction of the environmental impact levels of all anthropogenic sources and a new system for standardizing the permissible environmental impact (the objective is to decrease specific environmental impact levels by 3-7 times depending on the industry). The level of environmental impact is expected to decrease by 2-2.5 times by 2020. It will enable the Russian Federation to reach the modern indicators of nature conservation accepted by developed European countries.

In order to implement the provisions of this document, on 18 December 2012, the Government of the Russian Federation adopted a decree "On Approving the Action Plan for the Implementation of the Foundations of the State Policy in the Field of Environmental Development of the Russian Federation for the Period till 2030"[2] establishing the legal basis for detailing the mentioned declarative document.

Taking into account the specifics of the economic development and environmental conditions of the regions, on 6 October 2011, the Government of the Russian Federation approved the Strategy for Social and Economic Development of the Ural Federal District for the period till 2020 No.1757-r[3]. In particular, its clause 16 focuses on the issues of environmental protection and ecological safety in the region. In order to implement the Strategy, the Government of the Russian Federation also passed Order No.619-r of 23 April 2012 "On Approving the Action Plan

[2] Collection of Legislation of the Russian Federation. 2012. No.52. Art.7561.
[3] Collection of Legislation of the Russian Federation. 2012. No.19. Art.2453.

for the Implementation of the Strategy for Social and Economic Development of the Ural Federal District for the Period till 2020”[4].

Based on the legal analysis of these documents, it is clear that the current goal of the environmental policy is to ensure the implementation of the concept of sustainable development, the exercise of the right of every person to a favorable environment, the strengthening of law and order in the sphere of environmental protection and environmental security.

It should be noted, however, that the legal basis for ensuring environmental security was laid down by the Constitution of the Russian Federation as early as in 1993. So, clause “e” of Article 72 of the RF Constitution refers the issues of ensuring environmental security to the issues of joint competence of the RF and the RF subjects.

To ensure the implementation of this constitutional provision, the Federal Law “On Environmental Protection”[5] establishes a number of separate legal norms on the issues of ensuring environmental security. Thus, the preamble of this Federal Law No.7-FZ says that the present Federal Law defines the legal basis for the state policy in the field of environmental protection, ensuring a balanced solution of socio-economic objectives, maintaining a favorable environment, biological diversity and diversity of natural resources in order to meet the needs of the current and future generations, to strengthen the law and order in the sphere of environmental protection and ensuring environmental security.

An obvious advantage of environmental legislation is that it has elaborated a clear legal definition of environmental security. This definition is contained in Article 1 of Federal Law “On Environmental Protection”: environmental security is a state of protection of the natural environment and vital human interests from possible negative impacts of economic and

[4] RF Government Order on 23 April 2012 No.619-r “On Approving of the Action Plan for the Implementation of the Strategy of Social and Economic Development of the Ural Federal District for the Period till 2020” // Collection of Legislation of the Russian Federation. 2012. No.19. Art.2453.

[5] Federal Law “On Environmental Protection” of 10 January 2002 No.7-FZ // Collection of Legislation of the Russian Federation. 2002. No.2. Art.133.

other activities, emergency situations of a natural and man-made character and their consequences.

To implement the above provision, Article 3 of the Federal Law "On Environmental Protection" establishes a number of principles concerning environmental security: the principle of protection, reproduction and rational use of natural resources as necessary conditions for ensuring a favorable environment and ecological safety; the principle of responsibility of public authorities and local governments for ensuring a favorable environment and ecological safety and the principle of environmental hazard presumption of the planned economic and other activities. The purpose of ensuring environmental security is also reflected through the implementation of such functions of environmental management as environmental rationing (Article 19) and environmental certification (Article 31). Chapter 5 of this Law establishing requirements in the sphere of environmental protection in economic and other activities in Art.34, 35, 40, 44, and 50 obliges economic entities to meet environmental security requirements.

Thus, we see the "main" environmental law contains a sufficient legal basis for ensuring the implementation of the environmental security principle at both legal and practical levels.

The main provisions of Federal Law "On Environmental Protection", concerning the issues of ensuring environmental security, are detailed in environmental legislation as a special branch. The following documents are among these sources: Federal Law "On Special Ecological Programmes for Rehabilitation of Radiation Contaminated Regions"[6] (Art.5), Federal Law "On Environmental Expertise"[7] (Art.3), Federal Law "On Wildlife"[8] (Art.25), Federal Law "On Protection of Atmospheric Air" (Art.6, 11, 15) and the Presidential Decree "On the Presidential Commission for Strategic

[6] Collection of Legislation of the Russian Federation. 2001. No.29. Art.2947.
[7] Collection of Legislation of the Russian Federation. 1995. No.48. Art.4556.
[8] Collection of Legislation of the Russian Federation. 1995. No.17. Art.1462.

Development of the Fuel and Energy Sector and Environmental Security"[9]. The issues of ensuring environmental security are also touched upon in the Ecological Doctrine of the Russian Federation.

Even proceeding from the specified list of normative legal acts, it is possible to draw a conclusion on a fairly comprehensive legal regulation of environmental security issues by such a branch of law as environmental law.

However, it should be noted that the Concept of Environmental Security should be developed within the framework of various branches of law, because it is part of the national security.

Therefore, the legal norms governing environmental security can also be found in the Town Planning Code of the Russian Federation[10] (Articles 2, 49), the Air Code of the Russian Federation[11] (preamble of Art.28), the Inland Water Transport Code of the Russian Federation[12] (Articles 34, 39, 40), the Labor Code of the Russian Federation[13] (Article 41), Federal Law "On Railway Transport in the Russian Federation"[14] (Articles 6, 20, 22.1), the Administrative Code of the Russian Federation[15] (Chapter 8), the Criminal Code of the Russian Federation[16] (Chapter 26, Article 358 "Ecocide") and in other normative legal acts.

Based on the above, we see that the legal regulation of ensuring environmental security is provided by means of various branches of law, with administrative and criminal law playing an important role among them.

The most topical issues to be resolved within the framework of improving the administrative legislation regulating the grounds for establishing legal

[9] Decree of the President of the Russian Federation "On the Presidential Commission for Strategic Development of the Fuel and Energy Sector and Environmental Security" of 15 June 2012 No.859 // Collection of Legislation of the Russian Federation. 2012. No.28. Art.3879.

[10] Collection of Legislation of the Russian Federation. 2005. No.12. Art.16.

[11] Collection of Legislation of the Russian Federation. 1997. No.28. Art.1383.

[12] Collection of Legislation of the Russian Federation. 2001. No.11. Art.1001.

[13] Collection of Legislation of the Russian Federation. 2002. No.1 (part 1). Art.3.

[14] Collection of Legislation of the Russian Federation. 2003. No.2. Art.169.

[15] Collection of Legislation of the Russian Federation. 2002. No.1 (part 1). Art.1.

[16] Collection of Legislation of the Russian Federation. 1996. No.25. Art.2954.

liability for environmental offenses are the following: to define administrative liability of enterprises for environmental offences as a type of legal liability that occurs after an offence is committed in the sphere of ensuring environmental security and which is expressed in the application of special administrative punishments by particular state bodies; to establish strict administrative sanctions for the enterprise to be applied in case of aggravating circumstances, for example, in the form of a complete withdrawal of income received in the process of committing an environmental offence that has undermined the environmental security of the state.

It should be noted that among the measures to ensure environmental security, significant attention is paid to improving the practice of bringing guilty persons to administrative liability for committing environmental offences.

F.G. Myshko rightly points out that violators of environmental legislation often avoid liability because employees of state bodies responsible for environmental protection, due to their legal incompetence or other reasons, send case papers to the police to initiate criminal cases, although the nature of such offences must entail administrative liability. At the same time, the reason for extremely low effectiveness of the administrative jurisdictional activity of the police in the sphere of ensuring environmental security is that state bodies responsible for environmental protection do not submit materials to the investigative authorities to initiate criminal cases against malicious violators that have inflicted significant damage to the state, but apply only administrative measures[17].

Now, let us dwell on criminal liability provided for in case of an environmental crime.

In accordance with the RF Supreme Court Plenum Resolution "On Application by Courts of the Legislation on Liability for Violations in

[17] Myshko F.G. Ekologicheskaia bezopasnost': monografiia [Environmental Security: Monograph] M: UNITI-DANA, Zakon i pravo, 2003, p.148.

the Field of Environmental Protection and Management"[18] adopted on 18 October 2012, environmental security and rational nature management is ensured through the preservation of the environment and its protection, elimination of environmental consequences of human activity in the conditions of increased economic activity and global climate changes.

One of the most debatable issues is the object of environmental crimes. The object of criminal legal protection is environmental security; favorable environment; biological diversity; relationships in the sphere of environmental protection, rational nature management, conservation of the environment that is optimal for human life and other creatures; ecological law and order, and public safety…

The public danger of environmental crimes is connected with their enormous harmfulness. Criminal activities towards the environment undermine the integrity of the Earth's ecosystem and environmental security. All this proves the public character of these social relations and the impossibility to have an environmental crime case dismissed based on the reconciliation with the victim (Article 76 of the Criminal Code of the Russian Federation and Article 25 of the Criminal Procedure Code of the Russian Federation).

Measures provided for by criminal law to protect the environment and ensure environmental security, of course, are not an absolute guarantee of environmental protection from any adverse impact; nevertheless, they indicate that the state is ready to protect the environment and its separate natural components. Therefore, the development and improvement of these measures seems extremely important for the criminal legal system of our state.

Considering the model of protecting the environment and ensuring environmental security from the viewpoint of criminal law, it is possible to distinguish such a combination of institutions established by criminal law such as a system of environmental crimes and a system of criminal

[18] Rossiiskaia Gazeta. 2012. No.251. Oct.31.

penalties, which is one of the most extreme but effective measures for protecting the environment.

It should be noted that the modern system of criminal penalties for environmental crimes has recently become the object of reforms. Their objective is to change such criminal legal norms, which do not meet the requirements of time, so that they most effectively comply with modern principles of the environmental and criminal legal policy of the Russian Federation in matters of ensuring environmental security.

Ecological safety in transport is another interesting aspect of environmental security.

Transport in Russia, which includes road, sea, inland waterway, rail and air transport, is one of the largest polluters of air, water and soil. As a result, the negative influence of various types of transport also inflicts significant damage to the plant and animal life. The impact of the road and air transport on the environment comes mainly in emission of toxic substances from transport engines and harmful substances from stationary sources into the air as well as the negative impact of the traffic noise. The negative impact of the sea and inland waterway transport is caused by the emission of harmful pollutants into water bodies and accidents during transportation of oil and other hazardous substances and wastes.

The main mass sources of environmental pollution include road transport and the infrastructure of the road transport complex. A relative share of the road transport in total emissions of pollutants from all sectors of economy remains at a high level despite the decline in absolute values that began in 2006. Increased automobilization of the population significantly increases the negative impact of other specific factors, like noise pollution of the environment, contamination by transport activity wastes, alienation and degradation of land used for temporary unorganized parking and cars storage.

Pollutant emissions from cars into the atmosphere far exceed the emissions from other vehicles. Then, by the degree of danger to the

environment, comes railway transport, air transport, sea and inland waterway transport.

So, according to the *Report on the Environmental Situation* in the Sverdlovsk region in 2015[19], emissions of pollutants into the atmosphere from motor transport in the region amounted to 418.1 thousand tons (96.7% of the level of 2014). The major share in the total emissions of pollutants from motor transport is carbon oxides (77.91%) and nitrogen oxides (11.2%) and volatile organic compounds (10.3%).

Nowadays, the problem of developing environmentally friendly land transport is nationally important. Vehicles inconsistent with environmental requirements, the continued increase of vehicles and traffic flows, unsatisfactory road conditions - all this makes the ecological situation even worse and puts humanity on the verge of the environmental catastrophe.

In the modern period, natural resources in large urban areas are in such a hazardous state that this situation affects the conditions of life and health of people, the number of genetic abnormalities increases, and the life expectancy decreases.

The terrible level of air pollution by the amount of harmful gas MPC (Maximum Permissible Concentration) in Moscow, St. Petersburg, Yekaterinburg and other large cities exceeds the maximum permissible level by 20-30 times. So, in Yekaterinburg, more than 100 days a year smog hangs over the city in windless weather, and, therefore, economic entities are often recommended to reduce the level of emissions into the atmosphere.

In addition, it should be noted that road transport inflicts significant harm to the natural vegetation. Forests and parks in cities are oppressed, because plants react to air pollution even when the level of concentration is well below the sanitary and hygienic standards of ambient air quality. For example, MPC of such substances as nitrogen dioxide, sulfur dioxide,

[19] Official site of the Government of the Sverdlovsk Region // http://www.midural.ru/news/on_the_eve/document85105/

suspended substances, and carbon monoxide for people is 2-3 times greater than for wood species, and of formaldehyde is 10 times higher.

Road transport considerably contributes to greenhouse gas emissions; it is one of the key sources of their emissions (this issue is regulated by the Kyoto Protocol to the United Nations Framework Convention on Climate Change). The share of carbon dioxide emissions from fuel combustion of road transport is more than 90% (excluding pipeline transport).

The consistent harmonization of the Russian legislation, standards and transport documentation with the ones effective on international markets of transport services, and gradual alignment of the legal regulatory framework in the area of transport, including regional levels, with the WTO norms and rules are the main directions of international integration in the field of transport.

To implement the main directions of solving the problem of transport ecological safety, a number of documents was adopted, among them are Decision of the Customs Union Commission of 9 December 2011 No.877 “On the Adoption of Technical Regulations of the Customs Union “On the Safety of Wheeled Vehicles”[20] and Letter of the Federal Customs Service “On the Application of Technical Regulations on the Safety of Wheeled Vehicles and the Issuance of Vehicle Certificates” No.01-11/39997[21]. However, the adoption of these legal acts is not enough for the legislation harmonization.

The quality of gasoline and diesel fuel produced by Russian refineries also has negative influence on ecological safety. In the Russian Federation, such types of alternative fuels as hydrogen, biogas, liquefied petroleum gas, ethanol, compressed and liquefied natural gas (methane), liquefied hydrocarbon gas (propane-butane mixtures), dimethyl ether, and electricity are practically not used. The use of any of these types of alternative fuels will greatly reduce the emission of pollutants into the air. But here comes

[20] The official site of the Customs Union Commission - URL: http://www.tsouz.ru/
[21] The document was not published.

a question: how will the state make 50% of the automobile parks of large cities change to alternative fuels? This question still remains open.

Today, the level of negative impact of transport objects on the environment can be reduced only through targeted environmental activities in all areas of transport. And, first of all, we should implement principles of a comprehensive approach to solving environmental problems of transport.

Taking into account the modern conditions of the society development, the issues of ensuring the environmental security of the Russian Federation are a national problem. Environmental security is a multifaceted problem, the solution of which is possible only via an integrated approach to regulating public relations both at the international level and at the level of the Russian legislation. The concept of environmental security should be formed within the framework of various branches of law, an important place among them belongs to constitutional, international, environmental, land, criminal, administrative and customs law.

15 YEARS TOWARDS THE ADVERSARIAL PRINCIPLE IN COMMERCIAL LITIGATION

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Abstract
The author analyses the history of developing the adversarial principle in Russian commercial litigation, the adoption of the Commercial Procedure Code of the Russian Federation.

Keywords: adversarial principle, the Commercial Procedure Code of the Russian Federation, pre-trial settlement of disputes, specific features of summary proceedings, convergence of adversarial and inquisitorial proceedings

In 2002, the third and current Commercial Procedure Code of the Russian Federation (ComPC) was adopted. Its 15th anniversary is not a long history for a codified act but, at the same time, it is an important event in the context of the adversarial approach to the Russian commercial litigation.

Commercial procedure litigation began to develop in 1992 when the Supreme Commercial Court of the Russian Federation and the Commercial Courts of the RF subjects were founded and the first ComPC (that was effective only three years) was adopted. The transition from the earlier Rules on Economic Disputes Settlement to the ComPC was not easy: the transition from the executive body, i.e. the arbitrazh, to the court procedure was very rapid. The second ComPC was adopted in 1995.

The third ComPC of 2002 has become a very successful model of a modern procedure code. Its main advantage is a carefully designed concept of developing the adversarial principle of the Russian commercial litigation. The ComPC has established the rules on pleadings, disclosure, and the involvement of parties at the stage of case preparation and during the

proceeding; the court has been excluded from the process of collecting and producing evidence. The ability of appellate courts to admit new evidence was restricted, if it was not presented in the courts of first instance (Art.268 of the ComPC).

Article 9 of the ComPC concerning the adversarial procedure establishes the most important rule: "Persons participating in the case bear the risk of the onset of consequences caused by their performance of procedural actions or failure to do so". The basic consequence of negative procedural actions is "loss" of the case, the rejection of an application or a request (to secure a claim, to call evidence, etc.) by the court. Nearly 100 years ago E.A. Nevedyev clearly formulated the peculiarity of regulating the adversarial litigation: legislation, when evolving, aims to lessen the power of the court: "Direct coercion of a person to do any act is replaced by specifying in the law negative consequences for the litigants when they fail to act"[1]. In other words, the court does not force the persons involved in the case to do certain actions but their failure to act will be followed by negative consequences provided for by the law.

Indeed, the court can impose various sanctions: *punitive sanctions* (e.g. in the event of a failure to discharge the duty to present evidence ordered for presentation by the commercial court for reasons recognized by the commercial court as insufficient (para 9 Art.66 of the ComPC, etc.) or impose *judicial costs* onto the person participating in the case and guilty of a violation regardless of the results of the case consideration, for example, for producing evidence in violation of the established manner, including a violation of the term for the presentation of evidence, fixed by the court (para 5 Art.65 of the ComPC). Most importantly, the result of the case consideration depends on the active involvement of a party to a dispute.

[1] E.A. Nefedyev. Uchebnik Russkogo grazhdanskogo sudoproizvodstva [Textbook on Russian Civil Procedure]. Krasnodar. "Sovetskaua Kuban" ["Soviet Kuban"], 2005, p.255.

Since 2002 till 2017, the adversarial principle in litigation has been gradually improving. There are many examples of annual legal novations but the most crucial changes are the following:

For a long time, commercial courts were considering statements of defense as a right but not an obligation[2]. In 2009, the ComPC was amended, so that statements of defense became obligatory.

The striking innovation of the ComPC has become the provision of para 3.1 Article70: "Circumstances which the party refers to in support of its claims or objections are seen as recognized by the other party, if they are not directly disputed by it or if the non-consent to such circumstances does not stem from other evidence, proving the objections raised against the merits of the stated claims"[3].

Practically, p.3.1 of Article 70 of the ComPC expresses some "tacit acknowledgement"[4] of certain facts that are important for case consideration[5]. A party to a dispute independently chooses the ways of defending its interests. If it does not present the evidence to refute the arguments of the opposing party, then the court has the right to consider that the "silent" party admits them. It is a very adversarial institution; its analog was in the Charter of the Russian Civil Procedure in 1894. It is also present in foreign trials. The introduction of this rule is aimed at increasing

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[2] Amended by Federal Law of 19 July 2009 No.205-FZ.

[3] Para 3.1 was introduced by Federal Law of 27 July 2010 No.228-FZ.

[4] E.V. Vas'kovsky. Uchebnik grazhdanskogo protsessa [Textbook on Civil Procedure]. Krasnodar. 2003, pp. 312-313.

[5] The Charter of the Civil Procedure had two examples which can be attributed to tacit acknowledgement:

- in case, a party avoids to produce a document requested for by the opposing party, when it does not refute that it possesses this document, the court may find the evidence, supported by the reference to the document, proved (Art.444);
- refusal to take an oath ordered by the court or failure to appear to take the oath must be considered as recognition by the defaulting party of the opposite statement of the other party (Art.492).

Apart from the said examples, the Charter of the Civil Procedure contained another recognition that could have a tacit acknowledgement character. If a party itself recognizes the validity of such circumstance that proves the rights of the opposing party, then it is considered not requiring further proof (Art.480).

the efforts of the parties under the threat of incurring an unfavorable procedural consequence.

A great step has been done in the development of the court notice system within the spirit of adversarial justice and the procedural risk of the parties in case of their failure to perform the required acts.

The current edition of the chapter concerning court notices requires the court to wait for the party's confirmation of receiving the first court act. According to p.6 of Article 121 of the ComPC, persons participating in the case – upon the receipt of confirmation on the acceptance of the statement of claim or the application and after the institution of proceedings in the case, and persons, who joined the case or were summoned to take part in the case later, as well as other participants of commercial proceedings – after receiving the first court act on the case under consideration, take their own measures to obtain information on the progress of the case with the use of any kind of information sources and of any means of communication.

Persons participating in the case bear the risk of unfavorable consequences, occurring as a result of a failure to take measures to obtain information on the progress of the case, if the court has information, that the said persons have been properly informed about the initiated proceedings, except for cases when measures to obtain the information could not be taken due to emergency situations and unavoidable events. The risk of being not served a notice by the court is borne by legal entities and individual entrepreneurs that do not timely change the information about their address in the Unified State Register of Legal Entities and the Unified State Register of Individual Entrepreneurs. If the office of a legal entity or an individual entrepreneur is situated in a big trade centre, then they must ensure that the court notice "finds" them in the labyrinth of the office premises.

Besides, the ComPC applies procedural fiction of proper notification of persons participating in the case. Procedural fiction is defined by

I.M. Zaitsev as a specific method of law-making: "The law connects certain legal facts with knowingly non-existing facts"[6], but even without this it is impossible to consider the case. In the procedural areas of the law the use of procedural fictions is wide.

If there are grounds listed in Article 121 of the ComPC (procedural fictions), a person is considered to be properly notified. Procedural fiction of proper notification can be exemplified by the following: the addressee does not appear to receive the copy of the court act, forwarded by the commercial court in the established manner, about which the postal organization informs the commercial court; the copy of the court act is not served because of absence of the addressee at the indicated address, about which the postal organization notifies the commercial court indicating the source of such information, etc. In the said cases, a person is considered to be properly notified.

The possibility to consider cases with the use of videoconferencing systems also contributes to the development of the adversary principle (Article 153.1 was introduced into the ComPC in 2010) giving the parties an additional chance to participate in the court session, present their legal positions, be heard, and directly take part in the consideration of evidence.

Another possibility to conduct court sessions through the video conference with the courts of general jurisdiction was introduced in 2016 (para 2.1 Art.153.1 of the ComPC)[7]. This innovation arises from the fact that cases on insolvency (bankruptcy) of the natural persons are within the jurisdiction of commercial courts. Those citizens who are not able to be present in commercial courts may participate in the court sessions through the courts of general jurisdiction, thereby facilitating their judicial protection.

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[6] I. Zaitsev. Pravovye fiktsii v grazhdanskom protsesse [Legal Fictions in the Civil Procedure]// https://www.lawmix.ru//comm/8521

[7] Introduced by Federal Law of 1 May 2016 No.137-FZ.

The mandatory procedure for pre-trial settlement of disputes (contained in the former ComPC)[8] returned into the commercial procedure in 2016.

This procedural means acts simultaneously in several directions: it teaches parties to conduct negotiations and resolve legal conflicts in an amicable way. At the same time, it reduces the number of unsubstantiated claims submitted to court and the caseload in courts.

All procedural legislation is aimed at developing disputing parties' reconciliation to a maximum extent that is within the spirit of the adversarial justice.

It is well-known that mediation and other forms of alternative dispute resolution appeared earlier and are more resultative in the countries with adversarial justice. As Marc Galanter states, we see an increase in the number of lawyers, the amount of authoritative legal material, and the volume of legal literature, except the number of litigations[9]. Thus, in 1962, there were 20.8 civil cases for every Federal District judge in the USA, and in 2002 - 7.4! In 1962, 11.5% of civil cases in US Federal District courts ended up being tried in the courts of first instance, in 2002 – 1.8%. One of the reasons for this phenomenon which the author calls "vanishing trials" is the displacement of trial-like things into other settings - ADR forums including mediation[10]. In Great Britain, nearly 87% of cases end by peaceful settlement of disputes.

The development of mediation and other forms of alternative dispute resolution in adversarial justice seems to be connected with the fact that representation in courts of these countries is obligatory and professional. Lawyers in the countries with the adversarial system of civil procedure are actively engaged in the pre-trial stage (securing evidence, etc.) and during the stage of case preparation (pleadings, disclosure, motions, etc.). As a result, the lawyers are able to "weigh" the legal positions of the parties and

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[8] Introduced by Federal Law of 2 March 2016 No.47-FZ.

[9] Galanter M. The Vanishing Trial: an Examination of Trial and Related Matters in Federal and State Courts// Journal of Empirical Legal Studies. Vol.1, Issue 3, pp. 459-570. November 2004, p.460.

[10] Ibid, p.521.

foresee the outcome of the case before the trial. Changes in the ComPC are also aimed at developing the same approach. However, a significant disadvantage of the Russian judicial procedure is the lack of professional representation in courts. The ComPC of 2002 as well as the Civil Procedure Code of 2002 made an attempt to introduce professional representation into the procedure. At the same time, the corresponding provisions of the ComPC (p.5, 5.1 Article 59) of the Civil Procedure Code were declared unconstitutional and eliminated in 2005 (25-FZ of 31 March 2005). An attempt to introduce professional representation was successfully repeated 10 years later when adopting the RF Code of Administrative Procedure. The ComPC and the Civil Procedure Code have not yet returned to the idea of professional representation.

In 2012, a new model of summary proceedings was introduced in the commercial procedure[11]. At the same time, adversarial justice has been preserved; it is manifested in the duty of the parties to exchange pleadings and disclose evidence.

If the statement of defense, answer to the request, evidence and other documents are submitted to the court upon the expiration of the time fixed by the commercial court, the court does not consider them. They are returned to the persons who submitted them, except for cases when persons substantiate their impossibility to present the said documents in the time fixed by the court for reasons beyond their own control (p.4 Art.228 of the ComPC).

Specific features of summary proceedings are: written and absentia proceedings solely on the formed materials of the case. The principle of the oral nature of judicial proceedings is not applied; judicial hearings are not held; explanations of the parties and third persons are not heard; forensic examinations are not carried out, etc. These proceedings are electronic: persons participating in the case present documents and review the case materials file in the electronic form.

[11] Chapter 29 of the CPC as amended by Federal Law of 25 June 2012 No.86-FZ.

In 2016, summary proceedings were amended (following the changes in the civil procedure): the decision of the commercial court in the case tried in summary proceedings is delivered immediately after considering the case. The judge signs the resolutive part of the decision and attaches the decision to the case (p.1 Art.229 of the ComPC). The resolutive part of the decision delivered on the results of the case consideration is placed on the official website of the commercial court in the information and communication network "Internet" not later than the next day after its delivery.

The commercial court makes a substantiated decision only upon receiving an application from a person participating in the summary proceedings, thus, without such an application it is possible to appeal against the decision which is delivered by signing the resolutive part[12].

The said legislative approach will not be easy for the appellate courts while reviewing judicial acts without the statement of reasons, particularly in case of partial satisfaction of a claim. But this stimulates the persons participating in the case to submit an application on the delivery of the statement of reasons of the judicial act in a timely manner. However, both the court of general jurisdiction and the commercial court have the right to make the statement of reasons on their own initiative[13].

Similarly, the introduction of the rule on submitting a claim, a statement of defense, and evidence in the electronic form[14] does not violate the adversarial principle of justice either.

Writ proceedings can be considered as an exception from the adversarial principle[15] where the debtor does not participate in the proceedings at all and only sends counter arguments in pleadings with good reasons.

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[12] Cl.2 para 39 of Ruling No.10 of the Plenum of the Supreme Court of the Russian Federation of 18 April 2017 "On Some Issues of Application by Courts of the Provisions of the Civil Procedure Code of the Russian Federation and the Commercial Procedure Code of the Russian Federation on Summary Proceedings".

[13] Ibid. Para 3, cl.39.

[14] Para 3, Art.75 of the CPC as amended by Federal Law of 23 June 2016 No.220-FZ.

[15] Introduced by Federal Law of 2 March 2016 No.47-FZ.

Procedural legislation is now being unified as there are many interbranch principles and legal procedural institutions. Development of each procedural branch of law (administrative, commercial, civil and legal procedure) is based upon the adversarial justice which reflects the world tendencies in converging of adversarial and inquisitorial proceedings[16].

[16] I.V. Reshetnikova. Dokazatel'stvennoe parvo Anglii i SSHA [Evidence Law of England and the USA], 2nd edition, Moscow, Gorodets, 1999.

RECOGNITION AND ENFORCEMENT OF JUDGEMENTS BETWEEN THE EU AND RUSSIA: POSSIBLE PERSPECTIVES[1]

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Abstract
The article focuses on the main stages in developing relations in the sphere of legal cooperation between the Russian Federation and the European Union. The author analyses the issue of recognizing and enforcing foreign judicial decisions and offers a possible structure of the agreement between Russia and the European Union.

Keywords: recognition and enforcement of foreign judicial decisions, a legal model for mutual recognition and enforcement of judicial acts, an Agreement between Russia and the European Union on Jurisdiction, Recognition and Enforcement of Judgements in Civil and Commercial Matters

The problem: One of the means to exercise the right to judicial protection and access to justice is free circulation of judicial acts that protect the rights and legitimate interests of citizens and organizations. Specific differences between national legal orders regulating jurisdiction, recognition and enforcement of judicial acts encumber such free circulation.

To achieve the aim of free judicial acts' circulation, certain measures on legal cooperation in the sphere of civil cases should be taken. One of the instruments in achieving this goal is the conclusion of international agreements that, *first*, unify the norms on international jurisdiction of civil and trade cases when the possibility of collision in international judicial

[1] The article was compiled on the basis of the report delivered by the author at the international conference "EU Civil Procedure Law and Third Countries: Which Way Forward?" organized by the Institute of East European Law of Christian-Albrecht's-University at Kiel (Kiel, the Federal Republic of Germany, 2-3 February 2017).

jurisdiction is minimized and, *second*, simplify the procedural formalities aimed at speeding and facilitating the order of recognition and enforcement of judicial decisions, particularly, within the limits of strictly defined grounds for rejection to recognize foreign judicial acts.

The conclusion of the international legal contract serves to insure the aforementioned constitutional procedure rights, increase investment attractiveness of the Russian Federation, and provide the necessary backbone for cooperation of participants to the international business intercourse.

Issues of legal assistance are reflected both in separate bilateral agreements of Russia with some EU states and are also regulated by the Hague Conventions of 1954, 1965 and 1970 ratified by Russia and other signatories, many of which are the majority of the EU states. The most complex situation is in the sphere of recognizing and enforcing foreign judicial decisions (state courts), because the decisions of international commercial arbitration are enforced and regulated by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

In the Russian international civil procedure, foreign judicial decisions are generally recognized and enforced on the basis of rules which are slightly different from the rules applicable in certain EU states, but there is one fundamental difference: the provisions of Art.241 of the Administrative Procedure Code and Art.409 of the Civil Procedure Code according to which exequatur applications are considered only where there is an international agreement ratified by Russia and the State of the judicial decision origin and the direct subject of which is recognition and enforcement of decisions made by foreign courts. Besides, Art.241 of the Administrative Procedure Code provides for the possibility to recognize and enforce the decisions of foreign courts in accordance with the federal law, but there is no law for this situation in the Russian Federation. The principle of reciprocity as a basis for recognizing and enforcing foreign judicial decisions is enshrined as a general rule only in Art.1 of the Federal

Law "On Insolvency (Bankruptcy)" with regard to the decisions of foreign courts in insolvency proceedings.

Thus, no obligatory enforcement of a decision made by the court of the EU state is possible in the territory of the Russian Federation according to the general rule as there is no international agreement between Russia and the corresponding EU state.

We can delineate three spheres of legal relations for resolving disputes in state courts:

— in commercial disputes without an arbitration clause;

— in summary proceedings including injunctions of the courts;

— in cross-border insolvency cases;

— in international family disputes concerning children and the place of their residence, alimony, the status of the spouses' property and its division, in cases connected with the law on succession.

Main stages in developing relations in the sphere of legal cooperation between the Russian Federation and the European Union: First of all, it is necessary to underline the importance of EU states as the major economic partner for the Russian Federation. The statistics of 2016 indicates that the share of EU states accounts for 44.8% in the Russian turnover[2]. According to the information placed at the official website of the European Union, the EU is the main trading and investment partner for Russia, while Russia takes the fourth trading place with the EU[3]. All this determines the importance of decisions taken within the course of economic cooperation and the intercourse of legal issues.

Legal cooperation of Russia and the European Union has a long history and several levels:

— at the level of bilateral agreements concluded by Russia and separate states which are now the EU members;

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[2] https://russiaeu.ru/ru/torgovlya The website of the Permanent Mission of the Russian Federation to the European Union, accessed on 23 January 2017

[3] https://eeas.europa.eu/delegations/russia/6073/otnosheniya-es-rossiya_ru, accessed on 23 January 2017.

— at the level of the 1994 general agreement between Russia and the EU;

— with the use of international conventions and agreements drafted within the frame of the Hague Conference on Private International Law, the UN, and its specialized organizations (UNCITRAL, etc.).

Today, the legal basis for cooperation in civil and family cases is bilateral agreements. By my calculations (the figures vary) only 16 out of 28 EU states have bilateral agreements on various aspects of legal cooperation with Russia, including the enforcement of judicial decisions. Among them are Bulgaria, Hungary, Greece, Spain, Italy, Cyprus, Lithuania, Poland, Romania, Czech Republic, Slovakia, Slovenia, Finland, Croatia, and Estonia.

As regards the mentioned agreements, we should state the following. *First*, the majority of these agreements were concluded fairly long ago and many of them with the Soviet Union. *Second*, they provide for various levels and forms of legal cooperation, including the sphere of mutual recognition and enforcement of judicial decisions. For example, the scope of such recognition is very narrow in the agreement between the USSR and Finland, but it is wider in the agreements with Cyprus, Spain, and Italy. The scope of issues governed by the agreements concluded with a number of states in the Soviet period (Romania, Hungary, and former Yugoslavia) is rather wide. The same is true for the agreements with the Baltic countries (Latvia, Lithuania, and Estonia). But many agreements on legal assistance do not cover all types of judicial decisions. There are still no such agreements with major trade and legal partners of our country such as the Federal Republic of Germany and France.

Negotiations: is there light at the end of the tunnel? The development of our cooperation in civil and trade cases has more than a 20-year-old history reach. We will identify the key acts and actions of the EU and Russia in this sphere.

On 24 June 1994, the Partnership and Cooperation Agreement established a partnership between the Russian Federation and European Communities and their Member States[4]. It established the general framework, including in

[4] The agreement was ratified by Federal Law of 25 November 1996 No.135-FZ. For the Russian Federation it entered into force on 1 December 1997 (Collection of Legislation of the Russian

the sphere of legal cooperation. Particularly, Article 98 states the rule that "Each Party undertakes to ensure that natural and legal persons of the other Party have access free of discrimination in relation to its own nationals to the competent courts and administrative organs of the Parties to defend their individual rights and their property rights".

On 10 May 2005, another step was made to adopt the Road Map for the Common Economic Space of Freedom, Security and Justice. Chapter III "Justice" says: "to explore the possibility of an EC-Russia agreement on judicial cooperation in civil matters".

These issues were addressed in one way or another during the meetings, e.g. on 27 June 2008, the Joint statement of the EU-Russia summit on the launch of negotiations on a new EU-Russia agreement took place; that was followed by 12 negotiating rounds.[5]

One major event was a big conference in the French Court of Cassation in February of 2012 "EU-Russia: Towards Full Mutual Recognition of Judicial Decisions"[6] that was devoted to these issues.

Today the situation is the following. The website of the Permanent Mission of the Russian Federation to the European Union states that "during the extraordinary EU Summit of 6 March 2014 the leaders of Member States made a decision to suspend negotiations due to the situation in Ukraine"[7]. The official website of the European Union contains the following information: "Informal talks have been held between the EU and Russia on judicial cooperation in civil and commercial matters. *Eurojust* and Russia are striving to further strengthen their cooperation"[8]. Such different evaluations indicate, de facto, the freezing of the negotiating process in this sphere.

Federation, 20 April 1998, No.16).

5 https://russiaeu.ru/ru/torgovlya, accessed on 23 January 2017.

6 N.S. Zvereva. ES-Rossiia: na puti k polnopravnomu vzaimnomu priznaniyu sudebnykh reshenii [EU-Russia: Towards Full Mutual Recognition of Judicial Decisions]// Arbitrazhnyi i grazhdanskii protsess [Commercial and Civil Procedure]. 2012, No.5, pp.32-36; No.6, pp.27-33.

7 https://russiaeu.ru/ru/torgovlya, accessed on 23 January 2017.

8 https://eeas.europa.eu/delegations/russia/6073/otnosheniya-es-rossiya_ru , accessed on 23 January 2017.

What may be the legal model for mutual recognition and enforcement of judicial acts? Several variants are possible:

(1) *Maintaining the system of bilateral agreements and concluding new ones?* But as I understand from the comments of EU specialists the competence to conclude agreements for recognizing and enforcing of an agreement of a separate EU state with a third country has probably moved to the EU. Here, one of the main circumstances is to determine the competent court in the agreement.

(2) *Russia's accession to the Lugano Convention.* Some time before, the VI All-Russian Congress of Judges in its Resolution of 2 December 2004 (before adoption of Lugano II) indicated the following:

— an effective mechanism should be established to recognize and enforce foreign judicial decisions, and to provide mutual legal assistance;

— invited to join the Lugano Convention or to create an independent agreement based on its model.

(3) *The use of mechanisms of the Hague Convention on International Private Law.* As it is known, in 1971, the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters was concluded. It has not become a universal mechanism for ensuring the circulation of judicial acts. At present time, a new Convention on the Recognition and Enforcement of Foreign Judgments is being prepared.

Besides, the 1954 Convention on the Civil Procedure provides the enforcement of decisions on court fees and the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance provides a system of summary recognition and enforcement of recovery of child support. The 2005 Convention on Choice of Court Agreements is also very important for the matters of recognizing foreign judgements.

But the main question here is the level of other countries' involvement in the said conventions so that they would play the role of universal mechanisms for cross-border circulation of judicial acts.

(4) *Conclusion of the EU - Russia agreement of a universal and/or subject matter character.*

(5) *Change in the approaches applied by the Russian procedural legislation by way of departing from the principle of conventional exequatur, using reciprocity principles (German experience) or adopting general recognition regime of foreign judgements (French experience).*

The scope of problems which are appropriate to be solved in the agreement on the matters of recognition and enforcement of judicial acts. They include the following problems: conditions of enforcing judgements; the model of recognition and the level of court control; grounds to deny exequatur, including provisions on concurrent and exclusive competence of national courts; procedural issues (the application procedure, time limits, etc).

A possible structure of the Agreement between Russia and the European Union on Jurisdiction, Recognition and Enforcement of Judgements in Civil and Commercial Matters:[9]

Preamble

Chapter I. Scope of the Agreement.

— general provisions,

— exclusion of certain case categories from the scope of agreement (tax, customs disputes, other cases arising from public legal relations, cases decided by international commercial arbitration),

— definition of notions used in the Agreement.

Chapter II. International jurisdiction.

Part 1. General clauses

— identifying the international court competence of the Member States to the Agreement based on the procedural connecting factor rule (the permanent place of residence – the place of predominant live; matters of citizenship);

[9] The structure of this agreement includes materials prepared in 2004 together with I.G. Medvedev and S.S. Trushnikov, Ph.D. (Law).

Part 2. Special jurisdiction.

— the definition of procedural connections;

— on contractual obligations disputes;

— on maintenance disputes;

— on tort obligations;

— on cross-border insolvency cases;

— on civil claims in criminal cases;

— on disputes arising from the operation of structural subdivisions of legal entities;

— on insurance cases (if they are not excluded from the scope of the Agreement);

— on cases with the participation of consumers;

— on cases arising from individual labor disputes;

— exclusive international jurisdiction;

— at the location of immovable property;

— at the location of legal persons' Register;

— at the place of intellectual rights control;

— international forum connexitatis;

— international jurisdiction of securing claims;

— prorogation of jurisdiction;

— verification of international jurisdiction by the courts of States that are members to the Agreement;

Chapter III. Recognition and enforcement of judicial acts.

Part 1. General clauses.

Part 2. Recognition.

— the choice of recognizing judicial acts (automatic, summary recognition);

— grounds for the denial to recognize a judicial act (public order in case of conflict of laws; a violation of constitutional rights of the participants in the case, particularly, the right to legal protection; an identical decision, and other grounds);

— prejudicialness of facts provided by the judicial act that is recognized in the Member State to the Agreement;

— a correlation between the order of recognition and appeal against the judicial act);

— an appeal against the application on recognition;

Part 3. Enforcement.

— jurisdiction of the case on the enforcement of international judicial act of Member State to the Agreement;

— an order of application;

— notification of the interested persons;

— measures to secure the claim;

— an appeal against the act upon the application on enforcement;

Chapter IV. Final and transitional clauses.

Conclusion. All the above-mentioned demonstrates that the problem of recognition and enforcement of judgements delivered by state courts has several aspects and several solutions. One of the most important aspects is the level of mutual political and legal trust, including the quality of judicial documents and the observance of basic principles of fair trial. Also, important is the desire to make the process of judicial acts circulation easier for facilitating relations in the business sphere and relations between people.

CUSTOMS IN THE RUSSIAN JUDICIAL PRACTICE AND THEIR INTERACTION WITH THE LAW IN INTEGRATED JUDICIAL ACTS

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Abstract
The article analyses the interaction of customs and legal norms in the regulation of social relations. Based on the study of judicial practice, the author reveals specific features of judicial acts in which the norms of customs are applied to resolve cases.

Keywords: social regulation, sources of law, customs, folk laws, traditions, integrated legal acts, judicial power, judicial acts

The impact on public relations can be achieved through various regulators, including social regulation, which is carried out on the basis of a number of regulating factors both of normative character (rules of morality, religious canons, rules of customs, national traditions, etc.) and not reducible to the norm (public opinion, mass information, social stereotypes, social expectations, etc.).

On 1 March 2013, the changes introduced into the Civil Code of the Russian Federation[1] came into force. According to these changes the legislator formally attributed customs - established and widely applied rules of conduct whether or not recorded in a document - to the sources of civil law. The customs cannot contradict the legislation and the terms of the contract. Until 1 March 2013, customs as regulators were applied only in entrepreneurial activities.

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1 Federal'nyi zakon ot 30.12.2012 No.302-FZ "O vnesenii izmenenii" v glavy 1, 2, 3 i 4 chasti pervoi Grazhdanskogo kodeksa Rossiiskoi Federatsii" [Federal Law of 30 December 2012, No.302-FZ "On Amending Chapters 1, 2, 3 and 4 of Part I of the Civil Code of the Russian Federation"] (in Russian). Sobranie zakonodatel'stva Rossiiskoi Federatsii [Collection of Legislation of the Russian Federation]. 31 December 2012. No.53 (part 1), Art.7627.

The stated change corresponds to the international treaties which the Russian Federation is a signatory to. For example, according to Article 9 of the Vienna Convention on Contracts for the International Sale of Goods dated 11 April 1980[2], the parties are bound by any usage that they agreed to and by practices that they have established in their mutual relations.

Both legal regulation and regulation through customary law have a universal basis of values. Law and customs reflect those values that are the meaning and condition of human existence.

Judicial acts whose motivating parts, apart from a reference to a substantive law applied, contain a reference to customs and traditions, are considered integrated judicial acts.

Integrated judicial acts are judicial acts in which, in addition to the norms of law, the court applies other regulators. The existence of integrated judicial acts is accounted for by multilevel regulatory systems and their interconnection, as well as the place of judicial acts in the mechanism of legal regulation.

We can distinguish the following most common categories of cases (claims), when courts of general jurisdiction, **by virtue of direct indication of the law**, are guided by customs:

1. when determining the amount of burial expenses:

While determining the amount of compensation for the necessary burial expenses (Article 1094 of the RF Civil Code), courts are guided by Federal Law of 12 January 1996 No.8-FZ "On Burial and Funeral Affairs"[3], Article 3 of which defines burial as *ritual* actions for burial of a person's body (remains) after his/her death in accordance with *customs* and *traditions* that do not contradict sanitary and other requirements.

The burial presupposes the right of the relatives of the deceased to his/her decent funeral (Article 1174 of the RF Civil Code).

[2] Vestnik Vysshego Arbitrazhnogo suda [Bulletin of the Supreme Arbitration Court of the Russian Federation] (in Russian). 1994. No.1.

[3] Sobranie zakonodatel'stva Rossiiskoi Federatsii [Collection of Legislation of the Russian Federation]. January 15, 1996. No.3 Art.146.

In this case, it is necessary to know customs and traditions to determine the scope of ritual activities (services), items traditionally used in burial.

In one of the cases, plaintiff L. asked to collect the burial expenses from D., who hit the plaintiff's father by a car, as a result the latter died. Objecting to the satisfaction of claims, D., in particular, referred to the fact that the costs incurred in connection with the installation of the monument could not be attributed to burial expenses, since they are not directly related to the burial of the body of the deceased.[4]

Considering this case in accordance with the rules of procedure in the court of first instance, the Civil Chamber of the Vladimir Regional Court stated that based on the provisions of Federal Law No.8-FZ of 12 January 1996 "On Burial and Funeral Affairs", as well as on customs and traditions of Russia, expenses for a decent funeral include both burial expenses (purchase of a coffin, bedspreads, a pillow, a shroud, an icon and a cross (to be put in a hand of a deceased), wreaths, ribbons, a fence, a basket, a cross, a tablet, payment for laying a deceased in a coffin, digging a grave, carrying out a deceased, burial, installation of a fence, installation of a cross, provision of an orchestra, bringing the body from a morgue, services of a priest, transport to a cemetery) and payment for medical services of the morgue, as well as expenses for the installation of a monument and improvement of the grave, since the installation of a monument on the grave of the deceased and the care for the grave are generally accepted traditions in Russia - the relatives of the deceased person record the information about the deceased on the monument, address to it in the days of commemoration of the deceased when the relatives gather near the monument and honour the memory of the deceased, and caring for a monument and a grave is a symbol of honouring the memory of the deceased, a way to fill the need of taking care of an irretrievably gone man.

[4] Opredelenie Vladimirskogo oblastnogo suda ot 15.06.2012, delo No.33-1347/2012 [The decision of the Vladimir Regional Court of 15 June 2012. Case No.33-1347/2012]. Arkhiv Vladimirskogo oblastnogo suda [Archive of the Vladimir Regional Court].

The Civil Chamber considered the burial expenses paid by the plaintiff for the funeral of the plaintiff's father reasonable and subject to recovery from the defendant in full.

In another case, Z. appealed to the Gus-Khrustalny City Court of the Vladimir region claiming the recovery of expenses for the treatment and burial of her son from S., who had been found guilty of committing a crime as provided for in Part 4 of Article 111 of the Criminal Code of the Russian Federation for the deliberate bodily harm to the son of the plaintiff, which entailed his death[5].

By the decision of the Gus-Khrustalny City Court of the Vladimir region of 15 March 2012, the claim of Z. was satisfied.

S. filed an appeal and requested the court to abolish the part of expenses related to the funeral dinner, referring to the fact that these expenses do not apply to burial expenses.

Dismissing S.'s appeal, the Civil Chamber of the Vladimir Regional Court said that the complaint about the absence of grounds for recovering expenses for funeral dinners was untenable, since the Federal Law "On Burial and Funeral Affairs" links ritual actions with *customs* and *traditions*, and the mandatory arrangement of a funeral dinner, in particular, so that the relatives and other people could pay tribute to the memory of the deceased, belongs to customs and traditions in the Russian Federation.

At the same time, courts rely on the fact that *expenses for a funeral dinner* after 40 days of burial are not related to burial and are not necessary; therefore, the recovery of such expenses is denied, as a rule.[6]

Also, courts do not include assets spent on the purchase of alcoholic beverages consumed during memorial meals, substantiating it by the fact

[5] Opredelenie Vladimirskogo oblastnogo suda ot 29.05.2012, delo No.33-1499/2012 [The decision of the Vladimir Regional Court of 29 May 2012. Case No.33-1499/2012]. Arkhiv Vladimirskogo oblastnogo suda [Archive of the Vladimir Regional Court].

[6] Opredelenie Vladimirskogo oblastnogo suda ot 06.12.2011, delo No.33-4040/2011 [The decision of the Vladimir Regional Court of 6 December 2011. Case No.33-4040/2011]. Arkhiv Vladimirskogo oblastnogo suda [Archive of the Vladimir Regional Court].

that the notion of "a decent funeral" should have a reasonable limit[7], the cost of buying vodka is not related to ritual acts of burial[8], so the expenses connected with buying alcoholic beverages are not necessary costs[9];

2. when considering the buyer's requirements associated with the transfer of goods of inadequate quality:

In accordance with Paragraph 1 of Article 469 of the RF Civil Code, the seller is obliged to give the buyer the goods, the quality of which corresponds to the contract of sales.

In this case, according to Paragraph 2 of this Article, in the absence of conditions concerning the quality of goods in the contract of sales, the seller is obliged to give the buyer the goods suitable for the purposes for which the goods of this kind are *usually used*.

According to Paragraph 2 of Article 4 of Federal Law No.2300-1 of the Russian Federation of 7 February 1992 "On the Protection of Consumer Rights"[10], in the absence of conditions in the contract on the quality of goods (work, service), the seller (executor) is obliged to offer the consumer the goods (perform work, provide a service) *satisfying the requirements* and suitable for the purposes for which the goods (work, service) of this kind are *usually used*.

K. filed a lawsuit against Sh. pointing out the fact that in February 2010 she had purchased 2 cows from the defendant at the price of 50 thousand rubles under the contract of sales. The defendant assured K. that the cows were healthy. However, in May 2010, it turned out that cows were sick with leukemia. The plaintiff was informed in the veterinary clinic that as early

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7 Opredelenie Vladimirskogo oblastnogo suda ot 04.04.2012, delo No.33-979/2012 [The decision of the Vladimir Regional Court of 4 April 2012. Case No.33-979/2012]. Arkhiv Vladimirskogo oblastnogo suda [Archive of the Vladimir Regional Court].

8 Opredelenie Vladimirskogo oblastnogo suda ot 02.12.2010, delo No.33-3735/2010 [The decision of the Vladimir Regional Court of 2 December 2010. Case No.33-3735/2010]. Arkhiv Vladimirskogo oblastnogo suda [Archive of the Vladimir Regional Court].

9 Opredelenie Vladimirskogo oblastnogo suda ot 31.03.2011, delo No.33-1154/2011 [The decision of the Vladimir Regional Court of 31 March 2011. Case No.33-1154/2011]. Arkhiv Vladimirskogo oblastnogo suda [Archive of the Vladimir Regional Court].

10 Vedomosti SND i VS RF [Gazette of the Congress of People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation]. April 9, 1992. No.15. Art.766.

as February 2010 one of the cows had been sick. The defendant did not report about the disease when selling the cows. Considering the fact that it was dangerous to drink milk from the purchased cows and it was impossible to sell it, moreover, there was no possibility to hand it over for processing, the plaintiff believed that the defendant had sold her a defected product that could not be used for the purposes for which it was expected. The plaintiff applied to the court to terminate the contract of sales, return the cost of the purchase, recover damages incurred during the maintenance of cows, and compensate for the moral damage.

Satisfying K.'s demands, the court concluded that the defendant had given the plaintiff a defective product under the contract of sales because it did not match *the usual asserted requirements* to the product quality and could not be used for the purposes for which goods of that type are generally used, taking into account the fact that leukemia is a chronic infectious disease, and the milk from infected cows can be consumed only after pasteurization or should be sent to a milk processing plant, and the plaintiff purchased cows in order to give milk to her family as food and to sell it at the market.[11]

3. when determining the procedure for the use of property:

According to Paragraph 1 of Article 247 of the RF Civil Code, the possession and use of property in common ownership is carried out by the agreement of all the participants, and in the absence of consent - by the procedure established by the court.

As explained in the second paragraph of item 37 of Resolution of the Plenum of the RF Supreme Court No.6, the Plenum of the Supreme Arbitration Court of the Russian Federation No.8 dated 1 July 1996 "On Certain Issues Related to the Application of Part 1 of the Civil Code of the Russian Federation", the court takes into account *the actually established procedure* for the use of property that may not exactly correspond to shares

[11] Opredelenie Vladimirskogo oblastnogo suda ot 02.09.2010, delo No.33-2806/2010 [The decision of the Vladimir Regional Court of 2 September 2010. Case No.33-2806/2010]. Arkhiv Vladimirskogo oblastnogo suda [Archive of the Vladimir Regional Court].

in common ownership, the needs of co-owners and a real possibility of shared use.

Thus, the Alexandrovsk City Court of the Vladimir region, based *on the current order* in using the land between the co-owners of a dwelling house and their predecessors, applied it in the judgment of 3 August 2012, upheld by the Civil Chamber of the Vladimir Regional Court on 2 October 2012[12], defining the procedure for using the land proposed by the expert, and established that the boundary between the lots went not only along the existing fence, but also partly along the household buildings, that belonged to the co-owners, and the location of these buildings and the procedure for their use had not changed as between the former owners, as well as between the plaintiff and the defendant.

4. when resolving issues related to the exercise of the right to a name:

Clause 1 of Article 19 of the RF Civil Code establishes that a citizen acquires and exercises rights and obligations under his/her own name, including the first and the last names, as well as the middle name or the patronymic, unless the law or *national custom* states otherwise.

According to Article 58 of the RF Family Code (in the earlier edition), the name of the child is given by the agreement of the parents, and the middle or patronymic name is derived from the name of the father. At the same time this norm has a discretionary nature. The laws of the subjects of the Russian Federation or *national customs* may provide for a different procedure. In some of the republics that constitute the Russian Federation, it is customary not to indicate a patronymic at all.

Paragraph 1 of Article 11 of Federal Law No.143-FZ on 15 November 1997 “On Civil Status Acts”[13] (in the earlier edition) allowed to refuse the state registration of the civil status act in cases when: state registration was contrary to this Federal Law; the documents that were submitted in

[12] Opredelenie Vladimirskogo oblastnogo suda ot 02.10.2012, delo No.33-2977/2012 [The decision of the Vladimir Regional Court of 2 October 2012. Case No.33-2977/2012]. Arkhiv Vladimirskogo oblastnogo suda [Archive of the Vladimir Regional Court].

[13] Sobranie zakonodatel’stva Rossiiskoi Federatsii [Collection of Legislation of the Russian Federation]. November 11, 1997. No.47, Art.5340.

accordance with this Federal Law did not comply with the requirements imposed on them by the Federal Law and other regulatory legal acts.

In our opinion, it is difficult for a law enforcer to suppress parents' attempts to experiment with a child's name even if it contradicts the state registration of a civil status, the child's interests, national customs, morality, and the principles of reasonableness and conscientiousness.

For example, a boy's parents from Moscow named him BOF VFF 260602 (Biological object from the Voronin-Frolov family, born on 26 June 2002). The registration of a child's name was denied, the legality of the refusal was confirmed by the courts[14].

The problem in question is solved in different ways in foreign legislation. In Germany, controversial names are prohibited, as they can disorient and cause misunderstanding. In Denmark, there is a list of 7,000 permitted names; if parents want to give their child some other name, they should get permission from a local priest, after which the registry office gives the final answer[15].

On 1 May 2017, the Federal Law "On Civil Status Acts" was amended[16], and now it is prohibited to record the name of the child, which consists of numbers, alphanumeric symbols, numerals, symbols and non-letter characters except for the character "hyphen" or any combination or contains swear words, reference to ranks, positions, titles (paragraph 2 of Article 18). Similar changes have been made to Article 58 of the RF Family Code.

The need to take into account the established rules of conduct, customs and traditions is also fixed in a number of other norms:

— according to Article 1169 of the RF Civil Code, the heir who lived with the testator on the day of the opening of the inheritance has a priority

[14] See: Yurchenko O.Yu. Realizatsia roditelyami prava novorozhdennogo na imya [Implementation of the Parental Right to Name a Newly-Born Child] (In Russian). Semeinoe i zhilishchnoe pravo = Family and Housing Law. 2012. No.2. Pp. 23 – 25.

[15] Ibid.

[16] Sobranie zakonodatel'stva Rossiiskoi Federatsii [Collection of Legislation of the Russian Federation]. 2017. No.18, Art.2671.

right to receive items of *ordinary household furnishings* on account of his hereditary share;

— in accordance with p.2 of Article 15 of the RF Civil Code, the loss of expected profit is the lost income that this person would have received under *normal conditions* of civil turnover, had his right not been violated;

— p.2 of Article 635 of the RF Civil Code has established that the crew and their qualifications must follow the rules and conditions of the contract binding for all the parties, but if there are no binding requirements for the parties, they must follow the requirements to the *usual practice of operating* this type of a vehicle and the terms of the contract;

— according to p.2 of Article 713 of the RF Civil Code, if the result of the work is not achieved or, according to the contract, the achieved result is inadequate for reasons caused by shortcomings of the material provided by the customer, the contractor has the right to demand payment for the work performed, etc.

Besides, courts of general jurisdiction take into account customs and traditions in cases ***not directly specified in the law***, when considering the circumstances of a case one should be guided by such evaluation criteria and categories as reasonableness, conscientiousness, materiality, fairness, and proportionality.

The most common categories of cases in which courts of general jurisdiction take into account customs and traditions include the following:

— when examining cases on the protection of honour, dignity, business reputation (in one of the cases, the Civil Chamber of the Vladimir Regional Court[17] indicated that such judgments as "Judas", "meanness", "betrayal", "libel", used by the author when describing the plaintiff, characterize unscrupulous people of low morality, void of any principles, i.e. indicate

[17] Opredelenie Vladimirskogo oblastnogo suda ot 21.10.2010, delo No.33-3317/2010 [The decision of the Vladimir Regional Court of 21 October 2010. Case No.33-3317/2010]. Arkhiv Vladimirskogo oblastnogo suda [Archive of the Vladimir Regional Court].

improper, unethical behavior of the plaintiff in his private, social and political life) based on the existing common social understanding;

— when considering disputes over the demolition of unauthorized buildings (for example, by refusing to satisfy the claim of G. to S. concerning the demolition of an unauthorized construction, the court indicated that the revealed inconsistencies of the erected structure regarding fire safety and sanitary conditions existed well before the construction was built, which is due to *the historically established* density of construction in this part of the village Molotitsy of the Murom district of the Vladimir region[18]);

The analysis showed that customs as regulators of public relations are rather often used by the courts of general jurisdiction.

In addition to the life experience of the judge, his personal knowledge of customs and traditions, when questions arise about the existence or interpretation of customs (traditions), it is advisable to refer to historians, culturologists, religious scholars, linguists, ethnologists, and if necessary call for expert evidence.

In addition, there is a large number of special studies, monographs, collections containing a detailed description of the customs and traditions of many peoples[19].

The changes introduced by the legislator in Article 5 of the RF Civil Code again confirm the thesis that the court should not mechanically apply a legal norm, it should understand its social content, feel its civilizational and ideological value, see the relationship with other regulators of social relations, be able to apply these regulators to a whole variety of relations considered by courts[20].

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[18] Opredelenie Vladimirskogo oblastnogo suda ot 29.03.2012, delo No.33-944/2012 [The decision of the Vladimir Regional Court of 29 March 2012. Case No.33-944/2012]. Arkhiv Vladimirskogo oblastnogo suda [Archive of the Vladimir Regional Court].

[19] See: Lavrent'eva L.S., Smirnov Yu.I. Kul'tura russkogo naroda. Obychai, obryady, zanyatiya, fol'klor [Culture of the Russian People. Customs, Ceremonies, Activities, and Folklore] (in Russian). M.: Paritet, 2005.

[20] See: Malyshkin A.V. Integrirovannye sudebnye akty: obscheteoreticheskii analiz [Integrated Judicial Acts: Theoretical Analysis] (in Russian). Vladimir: VIT-print, 2012.

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WHO IS MR.PUTIN?

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Abstract
The article is devoted to the biography of the Russian President Vladimir Putin and to the main stages in his political career. Special attention is paid to the former mayor of St. Petersburg Anatoly Sobchak and his team. The author analyses domestic and foreign policy of Russia during the presidency of V.Putin making some conclusions and proposals.

Keywords: Vladimir Vladimirovich Putin, short biography, years of study and political career, presidency, domestic and foreign policy of Russia, national security of the Russian Federation

Short biography:

Vladimir Vladimirovich Putin (born on 7 October 1952 in Leningrad, Russian SFSR, Soviet Union) is a Soviet and Russian state and political public figure, the current President of the Russian Federation, holding office since 7 May 2012. From 2000 to 2008, he was the second president of the Russian Federation. Besides, he held the post of Prime Minister from 1999 to 2000 and from 2008 to 2012. Previously, Vladimir Putin was the Director of the Federal Security Service from 1998 to 1999 and the Secretary of the RF Security Council in 1999. He is a 1975 graduate of the Law Faculty of the St.Petersburg State University. He is also a Ph.D. (Candidate of Economic Sciences, 1997), Master of Sports in Judo and Sambo, the 1976 Leningrad Champion in Judo, and the Honored Sambo Coach of Russia. Vladimir Putin speaks German and English fluently.[1]

Now let us consider certain phases in the life and activity of this political figure. In his memoires Vladimir Putin notes: "I come from an ordinary

[1] https://ru.wikipedia.org/wiki/ Putin,_Vladimir_Vladimirovich

family and this is the way I lived for a long time, nearly the whole life. I lived as an average person, and I have always maintained that connection"[2].

His father, Vladimir Spiridonovich Putin, served in the submarine fleet from 1933 to 1934. Later in 1941, he was sent to the front. Defending the Nevsky Pyatachok (the Neva Bridgehead), Vladimir Spiridonovich was seriously wounded in his leg. After the War he worked as a foreman at the plant named after Egorov. His mother, Mariya Ivanovna Shelomova, survived in the Siege of Leningrad, and later she also worked at the plant. Vladimir Putin's grandfather worked as a cook, and his dishes were served onto the table of senior government and party officials, among them there were V.I. Lenin and I.V. Stalin.

Vladimir Vladimirovich Putin is the third child in family. Both of his elder brothers died when they were young. Albert died in infancy and Viktor died during the Siege of Leningrad[3]. So, the Putins had to go through very difficult times!

Further, Vladimir was studying at the eight-year school, then finished the secondary school specializing in chemistry, and later entered the Law Faculty of the Leningrad State University (LSU) named after A.A. Zhdanov (1970-1975). He graduated from the international department of the Law Faculty of the LSU, after that Vladimir Putin was assigned to the job in the KGB. An interesting thing is that the topic of his thesis was "The Most Favored Trading Principle for the Nation in International Law" (his scientific supervisor was Lyudmila Nikiforovna Galenskaya[4], Department of International Law).

So comes the question: what about serving in the Soviet Army? He did not serve. Vladimir Putin entered the Law Faculty of the LSU in 1970. Why? On the President's personal website it is said: "Even before finishing

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[2] http://www.uznayvse.ru/znamenitosti/biografiya-vladimir-putin.html

[3] Ibid.

[4] Today, L.N. Galenskaya is a professor of International Law, Law Faculty, SPBU. She is a famous and authoritative specialist in international public and private law, a world-famous scholar and founder of a number of priority areas in the Russian legal science. //http://spbu.ru/faces/medal/648-yuridicheskij-fakultet/18705-galenskaya-lyudmila-nikiforovna.html

school, Vladimir Putin wanted to work in intelligence. He went to a public reception office of the KGB Directorate to find out how to become an intelligence officer. There, he was told that first, he would have to either serve in the army or complete college, preferably with a degree in law"[5]. He chose law and did not make a mistake. You cannot escape your destiny!

Being a student, Vladimir Putin met Anatoly Sobchak, who then worked as an Assistant Professor of the Law Faculty of the LSU (1973-1981). However, since 1985, A.Sobchak was the Head of Economic Law Department - and this fact, of course, warms my soul and heart, because I am a representative of economic (entrepreneurial) branch of law too.

It was well-known that Anatoly Sobchak, who later became a People's Deputy of the Supreme Soviet of the USSR, had "his own people to trust", among them Vladimir Putin and Dmitry Medvedev. The latter was a post-graduate student who wrote his thesis under the supervision of Anatoly Sobchak. Vladimir Putin, the Lieutenant Colonel of the First Main Directorate of KGB, joined Anatoly Sobchak's team in 1990, being an assistant of the LSU Rector[6].

The further, the better… After graduating from the Law Faculty of the LSU, Vladimir Putin was assigned to serve in the state security agencies, where he worked his way from an ordinary member the Secretariat staff to the Lieutenant Colonel of the First Main Directorate of the USSR KGB. He was working in the counterintelligence division and in the foreign intelligence service. His childhood dream came true!

Serving in the state security agencies, the future president developed his professional competence. In 1979, he completed six months' personnel retraining courses, which were held in the Higher School of the Soviet Union of the KGB in Moscow. In 1984, he was sent for one year to study at the Red Banner Institute named after Y.V. Andropov, which he graduated from in 1985 majoring in "foreign intelligence". It is quite symbolic that a would-be president studied at the Andropov Red Banner Institute of the

[5] http://www.putin.kremlin.ru/bio
[6] https://ru.wikipedia.org/wiki/Sobchak,_Anatoly_Aleksandrovich

KGB. By the way, studying at the university Vladimir Putin had the surname of his school days "Platonov". At the university he was also the head of the academic subdivision; he zealously learned German. And that would help him later. From 1985 to 1990, Vladimir Putin served in Dresden, East Germany, using as a cover the position of the Director of the House of Friendship between the USSR and East Germany. During his mission Vladimir Putin was promoted to the rank of the Lieutenant Colonel and to the position of the senior assistant to the head of the department[7]. That is why he has excellent knowledge of German and the culture of Germany.

The next stage in Vladimir Putin's biography is his work in the Leningrad City Hall. At this stage we see that some priorities in the life of our hero changed. He said that after moving to work in the City Hall, he twice wanted to resign from the KGB[8]. Why twice? What was the reason? Why did he decide to leave his work in the organs? We know he resigned from the KGB only in 1992[9]. Though, we should not forget about the 1991 Collapse of the Soviet Union and the August Coup, when a group of politicians close to Mikhail Gorbachev announced about the creation of the State Committee on the State of Emergency (GKChP). On 20, August 1991, Anatoly Sobchak publicly opposed the GKChP; at the same time, Vladimir Putin resigned from the KGB.

From the above stated, we can draw a conclusion that Vladimir Putin considered Anatoly Sobchak a leader who would be influential in his career. Therefore when Vladimir Putin was faced with the choice between the mayor's office and the KGB, he gave preference to the first one, hoping that Sobchak's team would succeed. But, in 1996, Anatoly Sobchak lost the Saint-Petersburg Governor's election, giving up this place to his former first deputy Vladimir Yakovlev. In the opinion of D.G. Ezhkov, that loss became a personal defeat for Vladimir Putin. He refused from

7 https://ru.wikipedia.org/wiki/ /Putin,_Vladimir_Vladimirovich
8 Ibid.
9 Ezhkov D.G. Putin. Pochemu on stal takim? [Putin. Why did he become as such?] M.: Algoritm, 2012 (Putin Project) P.17.

Vladimir Yakovlev's offer to stay in the Government and, in fact, disappeared "from the screen". For a few months in summer 1996, a would-be president was unemployed. He was just living in the summer house thinking what to do.[10]

But "the matrix" of Vladimir Putin's connections worked. He became a Deputy Chief of the Presidential Property Management Department. Vladimir Putin recalls, "I would not say that I did not like Moscow, but I simply liked St.Petersburg more. Obviously, Moscow is a European city"[11]. As the saying goes, modesty is the best policy. But there is one question: who invited Vladimir Putin for this position?

So many researchers and analysts, so many minds. *One of the assumptions* is that it might be Pavel Borodin, who became the Head of the Presidential Property Management Department of the Russian Federation in November 1993, who invited Vladimir Putin for this position. Pavel Pavlovich Borodin is an eminent person on the political arena of Russia. Being the State Secretary of the Union of Russia and Belarus, he was arrested in New York for money-laundering on a warrant issued by Switzerland in January 2001. He was placed in jail in Brooklyn, but agreed to be extradited to Switzerland in April, where he was granted bail in the sum of 5 million Swiss francs, and then came back to Russia. Later, he was summoned to the Swiss court, where he had been testifying for four hours behind closed doors. In March 2002, the Swiss court found him guilty and sentenced him to a fine in the amount of 300.000 Swiss francs. But despite the fact that he was found guilty, he continued to occupy the position of the State Secretary of the Union of Russia and Belarus[12]. Quite a lenient punishment for a crime and inadequate reaction of the country's leadership!

The former Prosecutor General Yuri Skuratov in his book "*Kremlin Contracts*" described Pavel Borodin as a participant in many criminal cases, connected with the reconstruction of the Kremlin conducted by

[10] Ezhkov D.G. Ibid. P.30-31.
[11] http://www.putin.kremlin.ru/bio
[12] https://en.wikipedia.org/wiki/Borodin, _Pavel_Pavlovich

"*Mabetex*", a Swiss construction company. And not with the reconstruction of the Kremlin only! This company had several important contracts to reconstruct, renovate and refurbish the White House (1993), the building of the Federation Council (1994), the State Duma (1995) and, finally, the Moscow Kremlin (1995-1996)[13].

Another assumption is that it might be Anatoly Chubais, who also worked in Anatoly Sobchak's team, who helped Vladimir Putin to move in Moscow. As a result, Putin ended up working in the Presidential Administration of Russia. In 1990, Anatoly Chubais held the position of the first Deputy Chairman of the Executive Committee of the Leningrad City Council; he was also the Chief Economic Advisor to the Mayor of Leningrad Anatoly Sobchak[14].

But Dmitry Ezhkov says that Anatoly Chubais did not take part in the career of Vladimir Putin. He writes, "Putin was never in the team of Chubais. Anatoly Chubais has nothing to do with Putin's biography. It was Pavel Borodin who invited Vladimir Putin to Moscow. Putin and Chubais have, on the contrary, quite complicated and far from ideal relationships"[15]. Nevertheless, they are all from one political (Petersburg) team, they emerged on the political arena at the same time and made their way up simultaneously, but independently from each other. But here comes the question: is Anatoly Chubais a person from Putin's team? Of course, he is! Otherwise Chubais would not be the head of the state corporation *ROSNANO*. After inspecting this company in October 2013, Sergey Agaptsov, an auditor of the RF Accounts Chamber, revealed a lot of violations[16]. But that is not all! Anatoly Chubais has his own acknowledged place in the Kremlin hierarchy!

On 26 March 1997, Vladimir Putin was appointed the chief of the Main Control Directorate of the Presidential Property Management Department,

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[13] Skuratov Y.I. Kremlevskie podriady. Poslednee delo Genprokurora [Kremlin Contracts. The Last Case of the Prosecutor General] M.: Algoritm, 2012. P.58-88

[14] https://ru.wikipedia.org/wiki/Chubais,_Anatoly_Borisovich

[15] Ezhkov D.G. Ibid. P.33.

[16] https://ru.wikipedia.org/wiki/Chubais,_Anatoly_Borisovich

replacing Alexey Kudrin[17]. The former Minister of Finance (born on 12 October 1960, Dobele, Latvian Soviet Socialist Republic) also was a member of Sobchak's political team. He was the First Deputy of the Mayor of Leningrad (Anatoly Sobchak), a member of St.Petersburg Government, the Chairman of the City Administration's Economic and Finance Committee. Alexey Kudrin resigned after Vladimir Yakovlev's victory in St.Petersburg Governor's elections in 1996.

One interesting fact is that his thesis was entitled "Comparability in the Mechanism of Realization in Economic Competition". In 1983, Anatoly Chubais received his Ph.D. (Candidate of Economic Sciences). In 1997, Vladimir Putin defended his Ph.D. dissertation in economics entitled "The Strategic Planning of Regional Resources under the Formation of Market Relations" (his scientific supervisor was V.A. Fedoseev, a well-known specialist in the economy of mineral raw materials). The difference is that A.Kudrin and A.Chubais received their degrees on the basis of higher economic education, while V.Putin defended it on the basis of higher legal education. The theme he selected is very far from jurisprudence like the Decembrists were far from the people! We should not forget that at that time Vladimir Putin worked in the Presidential Administration of Russia and was mastering a new area of activity. We can only guess how much commitment and hard work it required!

In 2005, Clifford Gaddy and Igor Danchenko, researchers from the Brookings Institute in Washington D.C., tried to find plagiarism in Vladimir Putin's thesis, announcing that 16 out of 20 pages of the main part of his thesis are an exact copy or close to the original text from the classic American textbook *Strategic Planning and Politics* written by professor William King and professor David Cleland, which was published in 1978. Besides, they say that six charts and graphs are almost identical to the American professors' work. Representatives of the academic community in St.Petersburg repudiated such allegations. In Russia the information on

[17] https://en.wikipedia.org/wiki/Putin,_Vladimir_Vladimirovich

plagiarism in Putin's dissertation can be found only on the Internet in online publications and the magazine *Kommersant-Vlast*[18]. **Thus**, everything went smoothly, without any problems!

Since 1998, Vladimir Putin began quickly climbing the career ladder. On 25 July 1998, he was appointed the Director of the Federal Security Service. On 25 March 1999, he became the Secretary of the Security Council, while retaining the position of the FSB Director. On 9 August 1999, he was appointed the Prime Minister of the Government. On 31 December 1999, due to earlier resignation of Boris Yeltsin and according to the Constitution of Russia, Putin became Acting President of the Russian Federation. On 26 March 2000, Vladimir Putin was elected the President of the Russian Federation, winning in the first round with 52.4% of votes. The inauguration of President Putin occurred on 7 May 2000! Yes, a bit of a jump, isn't it?! Some authors are still in shock!

Dmitry Ezhkov writes: "Putin is a mysterious exception to the rule. It seems that he materialized from nowhere, but he became real due to the Providence or mysterious all-powerful forces, responsible for the historical development of Russia"[19]. The Petersburg journalist offers to leave all that nonsense about mysterious godlike Vladimir Putin's coming in policy on the conscience of Vladislav Surkov, the main ideologist and day-dreamer of the Kremlin.

Well, let us forget that nonsense. A famous writer Eric Ford considers it is the powerful forces of the Masonic Lodge that helped Vladimir Putin climb the political ladder[20]. What connection does he see between masons and the career success of our hero? Again, there are masons and their conspiracy! However, we should have a look at arguments and facts which the author cites.

The first argument. Erich Ford in his book *Masonry Track in Putin's Career* says: "…materials of independent research show that many political

[18] https://en.wikipedia.org/wiki/Putin,_Vladimir_Vladimirovich
[19] Ezhkov D.G. Ibid. P.166.
[20] Ford E. Masonskii sled Putina [Masonry Track in Putin's Career] M.: Algoritm, 2012. – 208 p. (Putin Project).

figures of the modern Russia belong to different Masonic lodges. Though the question concerning interconnection of Vladimir Putin and Masonic lodges is still not clear"[21]. Masons are able to keep their own and other people's secrets! But there are some facts proving this point of view. And a key (that track) to this mystery is a person who is close to Vladimir Putin. Who is it?

First of all, it is Anatoly Chubais. Erich Ford underlines that the Bilderberg Group includes such famous people like James Wolfensohn, William McDonahue, George Soros, and David Rockefeller. Anatoly Chubais is alleged to be the only participant from Russia. "At the same time, different sources claim that when Russia needed to obtain a loan, it was Anatoly Chubais who appeared on the political arena. Later, Peter Aven, the President of *Alfa-Bank,* was added to this list. By the end of 2008, he was the one who lobbied many business projects in the Government headed by Vladimir Putin as well as business projects in the Presidential Administration headed by Dmitry Medvedev"[22]. In brief, all events piled up like in the Borodino battle.

It is well-known that, on 3 December 1989, a significant event took place on the Malta - the meeting between George H.W. Bush and Mikhail Gorbachev. That Summit served as a basis for unilateral concessions on the part of the USSR, and non-interference of the USSR in the policy of East Europe. A principal agreement was reached on the unification of Germany by acquiring the German Democratic Republic by the Federal Republic. In other words, that was capitulation of the USSR in the Cold War[23]. However, very soon, the Soviet Union collapsed and there was only one superpower left.

During his presidency, Boris Yeltsin issued Decree No.827 "On Restoration of Official Relations between the Russian Federation and the Order of Malta". The Ministry of Foreign Affairs of the Russian Federation

[21] Ibid. P.38.
[22] Ibid. P.21-22.
[23] https://ok.ru/politepeople/topic/64705074722257

entrusted its representative in Vatican V.V.Kostikov to present the interests of Russia in the Order of Malta[24]. V.Kostikov had to resign after a scandal caused by the information that he was writing a book on his work with President Boris Yeltsin.

O.A.Platonov in his book *Russia under the Power of the Masons* says that mason lodges in Russia are cropping up like mushrooms after rain. Among the Malta fellows are B.Yeltsin, M.Gorbachev, B.Berezovsky, A.Yakovlev, R.Abramovich, E. Shevardnadze, S.Lisovsky, P.Borodin.[25] Apart from the Malta fellowship, O.A.Platonov distinguishes another lodge – *B'nai B'rith International* -which included: V.Gusinsky, Y.Luzhkov, A.Smolensky, A.Shaevich, M.Khodorkovsky, M.Freedman, P.Aven, and others.

However, the author does not submit any convincing evidence to prove that such mason lodges exist in the contemporary Russia and that senior officials of the state and oligarchs have something to do with the order of masons. Though such a point of view can exist. At least, the books by O.A.Platonov are a great success with readers[26].

There is no evidence to the statement made by O.A.Platonov that mason lodges in Russia are cropping up like mushrooms after rain. Of course, they do exist in Russia. For example, on 14 March 2015, in the east of Moscow there was another session of the Worshipful Lodge "The New Light" No.1989 of the Mason Mixed International Order "The Human Right". In the end of the day there was a festive agape[27]. On another site we read: "Welcome to the official site of the Nikolai Novikov Mason Lodge, one of the oldest mason organizations in Russia. The Worshipful Lodge was established on 30 August 1991 in Moscow and is part of the Grand Lodge in France with its registration number 1330"[28]. On 29 March 2015,

[24] Ezhkov D.G. Ibid. P.20-21.

[25] Platonov O.A.Rossiia pod vlast'iu massonov [Russia under the Power of the Masons]. M., 2000. P.21-30.

[26] In the opinion of the historian Petr Multatuli, the works by Platonov are full of emotional allegations https://ru.wikipedia.org/wiki/ Platonov,_Oleg_Anatolyevich

[27] http://co-masonry.ru/

[28] http://www.mason.ru/

there was a chapter of the Moscow Commandery of the Russian Priory of the Knights Templars Order after Saint Grand Prince Dmitry Donskoy.[29] It is headed by Grand Prior Igor Trunov.

Second argument. Eric Ford states that under Putin, the results of his presidency are quite scarce. Further, the author refers to quite well-known facts, like a high level of corruption and crime, a low growth of industry and trade, impoverishment of the population, stratification of the population by its level of income, growing inflation, etc.[30] I also referred to these arguments and facts, alongside with others, in my works, including this journal.

During the 20 years of Putin's presidency and the work of his team, the country has not seen any considerable changes in the social and economic sphere. On the contrary, we see only stagnation in the economy and society. During all these years, the political establishment has not clearly stated the objective of our development: what kind of state are we building? (or… have we built?) In the past it was clear: first, we were building communism, then developed socialism…and now? "In fact, the mission of the political elite is focused on the maximum use of the Soviet legacy against the collapse of the Soviet social system as a product of communism modernization and chaotic attempts to preserve, at least, some imperial symbols that our people are accustomed to so that they would not rebel"[31]. Russia has its own intermediary, transitional, statehood. What kind of?

If to look deeper, it is a very difficult question to answer. As I said before, there is an impression that we are living not in the state of rule and law but in the criminal state. Now, criminal ideology and criminal psychology are very widespread in Russia, and not only![32]

The "achievement" of Putin and his administration is the so-called "managed democracy", which they have managed to build with a minimum

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[29] http://www.osmthrussia.ru/news/show310/

[30] Ford E. Masonskii sled Putina [Masonry Track in Putin's Career] M.:Algoritm, 2012. P.40-41.

[31] https://www.novayagazeta.ru/articles/2011/03/15/6494-zakat-rossii

[32] See: Belykh V.S. Rossiia v luchakh modernizatsii ili novoi perestroiki // Biznes, menezhment i pravo [Russia in the Light of Modernization or New Perestroika// Business, Management and Law] 2010. No.2. P.46.

or zero influence (feedback) of the civil society in managing the state and society. This opinion is supported by Dmitry Ezhkov who thinks that this system has turned out to be so effective that it enabled Putin to become the Russian President three times[33]. **Thus**, what we have? Managed democracy and the vertical of power!

As some independent experts say, the elections to the State Duma in 2007 (and not only in 2007) showed how efficient the "top-down power vertical" is and how readily the citizens of Russia support political leaders who are just trying to imitate some opposition in Russia. And what if this imitation fails? Then the only opposition left will be the people. When the people understands that opposition will never come to power in Russia, it will start searching for new ways to exercise its own power and protect its own interests without trusting those who just imitate that they care about the people. What can "the horizontal of the people" oppose to "the vertical of power" today? Just its own will against all types of imitation in Russia: both against imitation of power and imitation of opposition[34]. Quite a serious opinion of experts!

The United Russia is a temporary phenomenon on the political arena. Future Russia does not need such "pocket" parties in such a quantity and quality. Probably, some of us will live till that time when Russia will see the appearance of such powerful parties like the Conservative and the Democratic, such parties which are well-positioned in the US and Western countries. For a party to exist, it needs social foundation and ideology. In November 2007, President of Russia Vladimir Putin said, "What is the United Russia? Is it an ideal political structure? Certainly, not. It does not have steady principles and ideology that the majority of party members would be ready to support and fight for. However, it is close to the power. And in this case, many scoundrels try to become its members, and very often they succeed. Such people pursue only their own interests, like

[33] Ezhkov D.G. Ibid. P.40.

[34] See the site of the All-Russian Centre of Public Opinion Research: http://wciom.ru/ arkhiv/tematicheskii-arkhiv/item/single/3691

personal enrichment, without caring about the benefit of others, thereby discrediting the party and the power…You may ask a question then: Why did I become the head of *the United Russia?* Because we do not have anything better"[35]. I personally would like to add that *the United Russia* is not just a party of sticking imposters but the party of major (oligarchs') capital, party and state officials.

The leaders of the country should make efforts to facilitate the appearance of real parties and movements. For that end they need political wisdom and maturity. If to think about the future of the country, it is possible to sacrifice some of the principles of *the United Russia*.

Third argument. Failed foreign policy of Russia. It is well-known that the concept of foreign policy of Russia has always been pro-European. Vladimir Putin and Dmitry Medvedev (separately) often stated that Russia is an organic part of Europe, and it is a European country. "Russia was, and has always been, a major European nation". But what about Asia?

After the joining of the Crimea and the events in Ukraine, the number of countries which are unfriendly, and even hostile, towards Russia has increased: among them the Baltic states, Poland, Rumania, Great Britain[36]. Anti-Russian sentiments are also strong in Israel (74%), Japan (73%), Germany (70%) and France (70%). Only in two countries, like Vietnam (70%) and China (54%), more than a half of respondents are sure that Vladimir Putin pursues the right foreign policy.

When asked the same question, only 24% of respondents from 39 countries approve of V. Putin's policy. But in Russia, where Putin is quite popular, he is supported by around 88% of the population. On the whole, it is not bad, if to take into account that the highest level of his support is in Vietnam.[37]

[35] See: Interfax, Rosbalt news agency, 13 November 2007// http://www.ria-arbitr.ru/anons.htm?id=17308

[36] http://newsruss.ru/doc/index.php/ nedruzhestvennye_Rossii_strany

[37] https://www.obozrevatel.com/blogs/51386-mir-otvernulsya-ot-rossii-i-putina.htm

Generally speaking, 58% of people in the whole world have a negative attitude to Putin. Most critically minded are in Spain (92%), Poland (87%), France (85%) and Ukraine (84%). Not less than ¾ of the population of Western Europe and Northern America and majority on the Middle East speak critically of Putin. In Poland and Ukraine such an attitude is understandable; however, it is of a surprise to hear such a reaction from Spain, France, Germany and Israel.

Permanent candidates to be included into this list of hostile countries are Croatia, Bosnia, Kosovo, Moldavia, etc. For example, relations between Russia and Montenegro have recently worsened because Montenegro announced its intention to join the NATO. The leaders of the country consider such a choice not as a betrayal but as an ultimate aim on the way to the West.[38] It is impossible to be part of the West and to be free from it! The same can be said about Serbia and Bulgaria. We know that Serbia faced a very dramatic choice: either to continue its fight for its territorial integrity and refuse from closer relations with Europe or to sacrifice its territorial integrity for the sake of the peace and economic development. The leaders of Serbia chose the second alternative with accession to the EU. The dialogue with Russia will always be built on pragmatic principles and will mainly concern economic relations. Belgrad is, first of all, interested in cooperating with Russia in the fuel and energy sphere.[39] And it is understandable!

Foreign policy is the continuation of domestic policy and, first of all, of the development of the national economy of Russia. An economically developed state with a powerful military infrastructure is the leader on the international, European and regional arenas. It is a law and psychology of leadership and a leader!

So, let us try to summarize conclusions: **1.** Despite some flaws in the foreign and domestic policy, President of Russia Vladimir Putin and his administration have made certain achievements. First of all, Putin has

[38] http://inosmi.ru/politic/20170220/238752970.html
[39] https://utro.ru/articles/2008/07/09/750498.shtml

managed to prevent the collapse of Russia in a similar to the USSR scenario. Such a risk existed and it still does. Therefore, we can hardly agree to the statement that Putin is preparing some sort of a matrix for the collapse of Russia. During the years of his presidency, Putin had a lot of opportunities to do that, but he did not. It reminds me of the opinion of some authors when they said that Andropov was preparing a similar matrix for the collapse of the USSR (I wrote about it earlier).

2. At present, there is an escalation of geopolitical, economic and military interests between the major participants of the world economy. We can speak about several centres of international power, they are: the USA, united Europe, China, Japan and Russia. But Russia (if to remember statements by Z.Brzezinski) has another role to play. As for united Europe, the leading role is likely to be played by Germany. The United States approves of this idea, but only with one condition – under the control of the USA. Therefore, it seems logical that G.Soros asked A.Merkel to be at the head of united Europe. For the last 15 years Russia has gradually (by steps) been building its reputation and has become one of the three leading countries in the world - together with the USA and China.

3. In the conditions of globalization and military competition Russia has to develop its military potential. Here, we need a whole set of measures, including deliveries of technologically advanced weaponry, development of the military contract service, significant funding of military expenses, establishment of new military bases close to the USA and western countries. Russia does not need to be loved by everyone! Let them fear Russia - if they fear, they respect! Therefore I support the idea of establishing military bases in Abkhazia and Southern Ossetia. Probably, it would be good to restore our military base in Vietnam, Cuba and other friendly countries (for example, in Syria).

However, we should be on alert and never forget that in case of military intervention in Syria and Ukraine there might be adverse consequences increasing the risks for Russia. Such risks can be fatal for the Kremlin. We

know such examples: in 1905, the defeat in the Tsushima battle during the Russian-Japanese war led to the end the Romanovs' dynasty who had been ruling Russia during three centuries. This year has marked the 100th anniversary of the Nicholas II abdication from the throne.[40]

4. Foreign policy is the continuation of the domestic policy in different forms and spheres. But the domestic policy of Russia is economically weak and does not correspond to the scale of its foreign policy. It is the most vulnerable spot for Russia that can significantly affect the Russian diplomacy[41]. Everything is interconnected!

5. In 2009 Russia took a new course on modernization which caused different reactions in the society. The idea of modernization itself does not cause any controversy, but it is necessary to define its spheres of application, objectives and principles. Not only our economy but also the political system of our country, different segments of the state and society need modernization. In my view, modernization should also concern the church, including the Orthodox Church. It also has very many flaws, like a high degree of politicization, corruption and other vice. These are the issues to be solved by the church and its leaders. What the state and the church have to strive for is spiritual modernization of the society. "People are not afraid to be involved in vice, and now it seems natural"[42]. We need a scientifically grounded concept of modernization of Russia on the whole, and of its economy in particular; the same concept is necessary for the new model of economy management.

A famous Russian philosopher Nikolai Berdyaev wrote, "New people, if Russia awaits such, will certainly look for new practical ways to serve and, apart from the existing ways, will look for others with utmost commitment,

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[40] See: Belykh V.S. Poslednii imperator Rossii: vzgliad iz Yekaterinburga// Istoriia gosudarstva i pravo [The Last Emperor of Russia: an Insight from Yekaterinburg// History of the State and Law] 2014. No.2. P.18-27.

[41] See: Fang Yujung, Professor of the Research Institute of International Problems of the Fudan University (Shanghai) http://globalaffairs.ru/global-processes/Pochemu-rossiiskaya-diplomatiya-postoyanno-nabiraet-oboroty-18602

[42] See: Proekt Rossiia. Vtoraia kniga. Vybor puti [Project Russia. The Second Book. The Choice of the Way]. M., 2008. P.88.

I believe in that". These words were said in the beginning of the XX century. New people are still being looked for. Russia is still waiting. So far, the senior leaders are playing with the old batch of cards with one and the same faces (kings, knaves, queens). Let us take, for example, the "unsinkable" A.Chubais. A leader's activity is often assessed from the position "ours – not ours". The practice of appointing successors and continuity of power is growing on a large scale. As a result, some are unsinkable, while others are vulnerable.

At a conference, the wife of A.I. Solzhenitsyn – Nataliya Dmitrievna – made a public statement. The political elite should understand what problems it can face taking into account sharp differences between varoius groups of people and a deep gap between a prosperous metropolitan city and poor provinces. "Aleksandr Isaevich is deeply concerned about this problem. We should pay attention to it. If the government ignores it now, in future it can lead to disastrous consequences", underlined the wife of the Nobel Prize winner[43]. Such conclusions are drawn by A.I Solzhenitsyn based on the comparative analysis of the current political situation and the situation before the 1917 February Revolution. Figuratively speaking, it is the situation when the lower classes do not want to live the way they are living, but the upper classes cannot rule in a new way. It would be better if we could cope with such a situation without any global turmoil. May God help Russia!

[43] http://www.welt.de/politik/article737662/Solschenizyn_sieht_in_Russland_vorrevolutionaere_Zustaende. html

MIKHAIL KOLTSOV IN SPAIN AND SOVIET FOREIGN INTELLIGENCE (1936-1938)

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Abstract
The article is devoted to the literary work of a famous writer M. Koltsov during the Spanish Civil War and Foreign Intelligence of the USSR in Spain (1936-1938).

Keywords: M. Koltsov, Spanish Civil War, Soviet Foreign Intelligence in Spain (1936-1938).

Before analyzing the situation in the period of the Spanish Civil War and the participation of the USSR special services in these events, we should consider the activities of the Soviet leading mass media, primarily of *Pravda*, *Izvestiya*, and *Krasnaya Zvezda* newspapers which were covering the most dramatic political and military conflict in Europe on the eve of the Second World War. As a *Pravda* political columnist, Mikhail Efimovich Koltsov was in Spain since 1936 till 1938, and his sharp reportages, written in the trench under the whizz of bullets, left a considerable mark in the history of struggle against fascism. Billions of Soviet citizens were reading Koltsov's long reportages. In Spain, he was known as Miguel Martinez. He wrote hundreds of articles, sometimes passing them by telephone. When he returned home, he published a book about the Spanish Civil War - "*The Spanish Diary*".

In the introduction to this book, A. Tolstoy and A. Fadeev describe "*The Spanish Diary*" as "a book about workers, peasants, soldiers, children, youth, and Spanish women, amazing folks which were the first to repulse

an attack of the united, black force of fascism, about people who started struggling with their bare hands against the well-armed enemy of mankind, and who, in the process of this struggle, organized and armed themselves, stood their ground in the battle and did not break.

The power of this book is the power of truth"[1].

On arriving in Spain in August 1963 as a volunteer, Mikhail Koltsov from the very first hours joined the struggle of the Spanish Republic for its independence. Every minute of his staying on the Iberian Peninsula, he wrote short reportages about heroism, bitter defeats, valour and honour, and imminent danger of fascism in Europe.

"*The Spanish Diary* is a book about heroism. About heroism of ordinary and brave people who are fighting for all cutting-edge and progressive mankind"[2].

Mikhail Koltsov was born in 1898 in Kiev, in the family of a leather exporter, a merchant of III guild Hayim Moiseevich Fridlyand and Hahman Rakhilya Shmakhovna. Since young years, Mikhail and his brother, Boris, were fond of literature. His brother made pictures in a handwritten magazine while Mikhail wrote sharp satirical notes. Boris changed his last name to Efimov and later became an artist and a famous caricaturist. Mikhail changed his last name to Koltsov. They might have done it following revolutionary traditions, although both brothers had never been involved in the underground activities. The most probable explanation is that they did it to conceal their national background. In 1916, Mikhail Koltsov studied in Petrograd, but he did not graduate from the psychoneurological institute. He was an active participant of February and October Revolutions; he admired Trotsky and enthusiastically spoke of him as "a genius of the Revolution". In 1918, Mikhail left the Russian Communist Party of the Bolsheviks (RCPB) publishing his reasons in mass media. All this was taken into account in 1938 - in the time of investigation against him.

[1] Koltsov M.E. Ispanskii dnevnik, Izd-vo Sovetskii Pisatel' [Spanish Diary, Publishing House "Soviet Writer"] M., 1958, P.6.

[2] Ibid. P.7.

On the one hand, he was a role model of socialistic lifestyle and communist ideals, on the other hand, he organized the work of mass media and in different periods of his life he was the editor-in-chief of *Krokodil*, a famous satirical magazine. On its pages, Mikhail exposed moral sins of the society and under his leadership the magazine's circulation would repeatedly increase. In 1930s, he was a member of the editorial board of *Pravda*. In August 1936, he was sent to Spain as a special columnist of *Pravda* and a political advisor for the government of the Popular Unity by the decision of Politburo of the All-Union Communist Party of the Bolsheviks (AUCPB).

He faced with a difficult task: he had to objectively cover the picture of what was going on, and, on the other hand, give comprehensive recommendations to the members of the government on complicated urgent issues, taking into account the existing difficult political situation. Let us read recommendations given by Mikhail in the extremely difficult time of the defense of Madrid in his diary on 30 September 1936: "We need: 1. Aviation, not so much. 2. Five, no… eight thousand shooters. 3. Trenches. 4. Tanks. At least, twenty tanks. I don't say fifty. If we had one hundred tanks, we would be able to reach Seville, not so far from the Portuguese border. But I do not say one hundred. I say fifty. 5. Clean up the city. Kick out at least 30,000 fascists. Shoot down at least 1,000 fascists. Evacuate prisoners. Close down pubs and dens. 6. One general with a good reputation among soldiers who is not a scoundrel. 7. England and France must send a sharp note to Germany and Italy against their participation in the intervention. 8. To make Largo Caballero at last understand that the position is critical. 9. To make Largo Caballero understand that the position is critical, but not hopeless. 10. Immediately, right now, we should start forming reserves for the counteroffensive"[3].

The attack of the Republicans under Madrid started on 29 October 1936. A Soviet armoured squadron with a volunteer crew, mostly ethnic

[3] Ibid. P.145.

Spaniards, took part in this attack. Though the attack was not supported by the Republican infantry, its success was stunning. This is how M. Koltsov describes the results of the attack against the Moroccans in the village of Sesena: "Tanks roll onto the crowd, tatter them by artillery fire and machine guns, trump and crush them by caterpillar treads. There are wild screams of the Moroccans; their bullets knock on the armour of tanks. The armoured column goes ahead through the square, along the street. The Moroccan cavalry squadron gets trapped here and cannot move. Horses rise on their hind legs, throwing dying horsemen off. Few seconds later, there is a pile of horses and human bodies, red frescos, white muslin scarves. Tanks cannot shoot because they go close to each other, that is why the leading tank shoots a few shells in this mess and then climbing on this pile of bodies goes ahead swerving from side to side crushing everything on its way and other tanks just follow it".[4]

On 6 November, Franco announced in mass media that his troops would be in Madrid by 7 November. And his right-hand man, General Mola, would welcome the parade of troops riding on a white horse. The very same day, Republican special squads shot down 6,000 captive François officers. International brigades managed to hold off the enemy but paid a high cost. Madrid did not surrender. For the first time since the coup, the aviation of the Republic demonstrated first victories. The new types of Soviet machines (I-15, I-16) navigated by the best volunteer pilots from the USSR struck a perceptible blow on the enemy.

The members of the Republican government represented a variegated palette of political trends, parties and organizations. The government had representatives of social and democratic quarters, anarchists, communists, republicans, and Basque nationalists. M. Koltsov noted with regret that there was no unity among the representatives of parties and organizations

[4] Ibid. P.202. The latest bibliography on the Moroccans see: *Balfour S.* Deadly Embrace: Morocco and the Road to the Spanish Civil War. Oxford, 2002; *Allard E. B.* The Crescent and the Dagger: Representations of the Moorish Other during the Spanish Civil War // Bulletin of Spanish Studies. 2015. P. 2–24.

although it was so much necessary. There were no talented military leaders among the senior leaders of the Republic. Military and economic help provided by the USSR was miserable in comparison with the expansion and military participation of fascism countries, especially of Germany, Italy, and Portugal. All these factors as well as a huge distance between Spain and the USSR contributed to the defeat of the Republic.

The information provided by M.Koltsov on "cooperation" between Trotskyists of the POUM (*Partido Obrero de Unificación Marxista*) and Franco's regime and "his friends" gives an answer to the question of a lot of historians whether there were certain "contacts" between POUM Spanish Trotskyists and Franco's secret services, the Nazi Germany.

There was an active net of agents of Franco as well as of German and Italian secret services in the territory controlled by the Republic. M. Koltsov who had a keen political and columnist flair always appeared in "hot spots". To get more objective information, M. Koltsov maintained contacts with a wide range of political representatives such as, for example, with the POUM, whose activities were contrary to the policy of the government. M. Koltsov furiously attacked them in his sharp emotional works. In May 1937, anarchists and members of the POUM rebelled in Barcelona, withdrew their troops from the battle-front, thus jeopardizing the security of the Republic. The rebellion was quelled, and tens of active participants were killed, including the POUM leader, Andrés Nin, the leader of Trotskyists' activities. The organization was prohibited and its participants were dissolved. On 25 June, M. Koltsov described the POUM activities in his diary: "A new spy fascist organization was uncovered in Madrid and its roots led to Barcelona. Arrested spies had their own radio station; they secretly provided Franco with information about disposition and regroupings of the Republican troops. More than two hundred members of the organization were arrested in Madrid. Among them there were officers from front headquarters, artillery officers, officers of armoured units and officers of quartermasters'

services. The organization had its own agents in the Information Department of the Military and Marine Ministries. Among the members of this spy organization there were representatives of old reactionary aristocracy, *Falange Española* (Spanish for "Spanish Phalanx of the Councils of the National-Syndicalist Offensive") and representatives of the POUM. Apart from spy activities, the members were making preparations for an armed fascist rebellion in the streets of Madrid. Spies were caught suddenly. With them they had incriminating evidence. It made the arrested spies plead guilty. One of them had a map of Madrid, and on the other side there was some information written by invisible ink. When the ink was made visible, there was the text: "Personally to the Generalissimo. Report: we have a possibility to report to you about all red troops' movements. The latest information sent by our transmitter proves that our information service has become better". This part was followed by an encoded part of the document. "Grouping and forming of forces in the rear is going on a little bit slow. Now we have nearly 400 people who are ready to act. Being well-equipped, they can become the striking force for our movement if there are good conditions for that. We perform your order to have our people in the POUM and among extremists very well. But we do not have a leader of propaganda who would start working independently from us to do this work in more safety. Following your order, I was in Barcelona to meet with *N* – the leading member of the POUM. I told him all your instructions. Lack of communication between him and you was because of his broken radio transmitter. He fixed it, and now it works. I hope you have received the main answer. *N*. urges you and your foreign friends to make me the only person to get connected with him. He promised me to send to Madrid some new people to intensify the work of the POUM. Due to such measures, the POUM will become a real support of our activities in Madrid, like it is in Barcelona. The information sent by *B*. is already old. In the near future we will provide you with some new data. We have

accelerated the work to organize groups of support. The question concerning operations in the south is still not clear"[5].

Taking all this into account, we cannot but mention the relations between M. Koltsov with foreign intelligence of NKVD, and namely with its resident A. Orlov, a senior major of state security. It is important to say that it has historically been common practice of all secret agents to cover their activities using the position of accredited journalists. In this respect, the USSR intelligence service was not an exception and had a wide range of opportunities and powers to use M. Koltsov. It would be naïve to think that living in the totalitarian regime and taking into account the role of NKVD in the life of the society, M. Koltsov - due to some moral considerations - could turn down the proposal of A. Orlov, the NKVD resident. M. Koltsov clearly understood that his staying in Spain and loyalty of the government to him depended on his relations with A. Orlov. In this connection, we can only assume that M. Koltsov maintained confidential relations with NKVD and his life in Spain was twofold: first, his official activities and, secondly, his secret life full of different content. When the Military Collegium of the USSR Supreme Court sentenced him to death, it could have been his relationship with A. Orlov that exacerbated the whole situation and was the main reason for such a decision. It is important to recall that A. Orlov was the head of the NKVD resident agency in Spain from August 1936 till July 1938. He became a wanted person because of his departure to the USA in 1938 where he became an illegal immigrant. (Read the biography of A. Orlov in the references).

In his diary M. Koltsov speaks about José Díaz and Dolores Ibárruri, the leaders of the Communist Party of Spain, with warm feelings and deep respect; he had confidential and trustworthy relationships with them.

In July 1937, despite a difficult political situation in the world, the Republican Spain hosted an International Congress of Progressive Writers in Defense of Culture. The Congress opened in Valencia and closed in

[5] Koltsov M.E. Ispanskii dnevnik [Spanish Diary] M., 1958, P. 516-517.

Madrid. Among participants of the Congress there were Louis Aragon, Martin Andersen Nexo, Anna Seghers, Andre Shanson, Denis Marion and the group of Soviet writers consisted of A. Tolstoy, I. Ehrenburg, A. Fadeev, Agniya Barto. The leader of the Soviet delegation was M. Koltsov. There was only one question on the agenda: "On the role of writers in the war against fascism – in the war for peace".

Later, such an active columnist position of M. Koltsov and his professional and friendly relationships with prominent figures of the Communist Party like N.I. Bukharin and V.A. Antonov-Ovseyenko, chief military advisers such as Y.K. Berzin and A.H. Artuzov turned into the contacts with "the enemies of the people".

It was a heavy psychological blow for the whole intellectual and creative society when M. Koltsov, "the herald" of socialism victories and a faithful follower of Stalin's policy, was arrested.

In his book, "*Through the Eyes of a Person of My Generation*", Konstantin Simonov wrote about it: "In 1949... Fadeev in the minute of revelation... told me... that in a week or two after Koltsov was arrested, he wrote a short note to Stalin about innocence of Koltsov in the eyes of many writers, communists and non-party people; and that Fadeev himself could not believe that Koltsov was guilty. Therefore he thought that it was necessary to tell Stalin about such a widespread opinion in the literary society and asked Stalin to meet him. A short time later, Stalin accepted Fadeev.

"So, you assume that Koltsov is innocent, right?" asked him Stalin. Fadeev told Stalin that he did not and, moreover, did not want to believe that.

"Do you think I wanted to believe it? I did not, but I had to", told Stalin.

With those words Stalin called in Poskrebyshev and ordered him to give Fadeev special documents to read.

"You'd better go and read. As soon as you read them, you will tell me what you think", Stalin told him… Fadeev followed Poskrebyshev in another room and sat down at the table with two folders of Koltsov's testimonies. Fadeev said these documents were terrible. Koltsov admitted to having

some connections with Trotskyists and POUM members… When I finished, I was taken to Stalin again.

"Do you believe now?" asked me Stalin again.

"I have to, there is no other way", Fadeev replied.

"If people ask you, you can tell them everything you have seen here", concluded Stalin and let Fadeev go".

This short dialogue between I.V. Stalin and the Secretary of the USSR Writers' Council shows how much the leader of the country and of the Party believed in the investigation of NKVD. Or just wanted to believe.

The monograph includes hundreds of Koltsov's articles, his reportages from Spain which do not need any comments. After his coming back to the USSR, "*The Spanish Diary*" based on his reportages was published. The book was a hit with the readers: the theme of the Spanish Civil War was one of the most popular in the USSR at that time.

M. Koltsov wrote three books of his "*Spanish Diary*". His creative and professional life ceased in December 1938. On 1 February 1940, the Military Collegium of the Supreme Court of the USSR sentenced M. Koltsov to capital punishment because of his "anti-Soviet and Trotskyist activities". On 2 February 1940, the sentence was implemented. The ashes of the fighter against fascism and a talented writer are buried in Moscow, in the Donskoy Cemetery. M.Koltsov died at the age of 42. He, like other victims of political repressions, was rehabilitated in 1956. His book, *"The Spanish Diary"*, a true chronicle about the first fight against fascism, became a real lasting monument to the life of its author, his epoch and the forgotten war. Undoubtedly, *"The Spanish Diary"* is the encyclopedia of the Spanish Civil War, a true story of young heroes of that war, of their destinies full of challenges and sacrifices for the ideals of human beings, for all of us.

The destiny of Mikhail Koltsov is an example for all of us, a sort of reminder that uncontrolled authority will inevitably turn a society into a concentration camp, where behind its wire "democrats" of all kinds would argue their ideological views debating about liberty of conscience, press

without censorship, and the immutable basis of the Constitution, devouring quite a disgusting camp soup.

Speaking about the professional activities of M.Koltsov, we cannot but mention his energy and professional achievements. He was the editor-in-chief of *Ogonek* and *Za Rubezhom* magazines; he was a member of the editorial boards of *Pravda* and *Za Rulem*. He was a creator of satiric magazines such as *Krokodil* and *Chudak*, and in the latter he was its permanent editor-in-chief.

Wolfgang Kasack described Koltsov as "the master of feuilleton, of a compact exciting style of writing with paradox and hyperbola which skillfully intensified the political connotation of his works".

Mikhail Koltsov was the head of the Foreign Department in the Union of the USSR Writers; he visited a lot of countries being a representative at International Congresses in Defense of Culture in Paris (1935), Barcelona (1937); he was the leader of the Soviet delegation, and the deputy of the Supreme Soviet of the USSR. His authority was as huge as his popularity. Young journalists admired him and tried to copy his style of writing; and his book *"The Spanish Diary"* was published in thousands during his life and even after his death.

Mikhail Koltsov went through "fire" and "water" of the revolution and the Spanish Civil War, through the thick and thin of the national hero's glory and popularity, humiliation and discredit by the government which in the end made him "the enemy of the people". With pride he was wearing his war honours: the Order of the Red Banner and the Order of the Red Star. But his heart was torn apart by nine grams of plumbum.

He had a bright life, full of art and uncompromising fight for human liberty, first of all, against international fascism and this is not just words. We will always cherish his memory.

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Contract Law of England: a Comparative Legal Study. Monograph.

Author: Belykh V.S.

The book is a comparative analysis of English and Russian legislation governing contractual relations. This publication is devoted to general provisions on the contract, the characteristic of the English contract, the sources of law, the legal nature of the contract, the conditions of validity of the contract. Particular attention is paid to the issues of concluding, executing and terminating the contract. The author separately investigates problems of the use of protective equipment for violations of legislation, judicial decisions and conditions of the contract. The monograph refers to judicial practice on topical issues of Contract Law. In addition, the work contains comments by well-known scholars and practitioners on the application of laws (statutes), acts of delegated legislation, judicial precedents and commercial customs. Legislation is provided as of September 1, 2016.

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Author: Belykh V.S.

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