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LEGAL ISSUES OF DEVELOPMENT OF INNOVATION ENTREPRENEURSHIP IN UNIVERSITY

VPI (branch) VSTU Volzhsky Engels 42 a,

In this report The author analyzed the legal problem of the use of the object of intellectual law in the activity of the higher educational establishment and defined the circle of legal problems, which it happens to deal with during the creation of the economic society. The conclusion was made that effective use of the market of intellectual products depends on its legal protection, ascertainment of its exclusive right and as a result the limitation of its use.

The practical recommendations are given about the admission of know-how as an intellectual product and the opportunities of its use in the activity of economic society.

Key words: Key-words: intellectual product, intellectual law, immaterial goods, intangible asset, know-how, object of intellectual law, result of intellectual activity, market of intellectual products.

At first the concept of “intellectual right” [1], “intellectual product” appeared at the end of 90-s of the XX c. It came into circulation with enactment of P. 1 of the Civil Code of the Russian Federation from 18.12.2006 N 230 – FL.

Intellectual capital has been developing recently. It became the foundation of economy of international legal and economic mechanism and intellectual property underlies it.

Modern high-technology market is built on these mechanisms and has the most evolving infrastructure in all developed countries.

Not coincidentally, the results of intellectual activities in Russia play more important role not only in spiritual but in material production, as well. Intellectual

product enters the market. And the market of property values undergoes changes: alongside with traditional role its less traditional part of results of intellectual activities is growing.

This very important process requires legal safeguard, i.e. without legal safeguard there can't be any economic turnover of intellectual product.

Nowadays, we can speak about the existence of many peculiarities of the results of intellectual activity that make their legal safeguard difficult. They are the following:

1 They can be used by indefinite range of people simultaneously.

2 The terms of moral amortization of the results of intellectual activities are unpredictable.

3 The value of some results of intellectual activities can be lost at any time.

4 Pecuniary valuation of the results of intellectual activity is hampered.

The main peculiarity of the market of intellectual products consists of the fact that here acts not the product itself but the rights to it. Besides this, intellectual product is the author's expression not just an object of market relations, that is why parity combination of economic and legal norms is necessary.

The Federal Law from 02.08.09 № 217 – FL "About introduction of amendments to certain legislative acts of the Russian Federation regarding creation of commercial partnership by budget scientific and education establishments with a view to practical application (implementation) of the results of intellectual activity" is aimed at solving the problems connected with the functioning of the intellectual product at the market, its real conversion into property value and, hence, at competitive recovery of goods.

Due to the acceptance of this law, higher educational establishments got the rights to create commercial partnerships and to introduce the rights to the results of intellectual activity in charter capital of given societies [2].

In spite of the fact that the law has been entered recently, it can be said that small innovative enterprises play an important role in the development of the modern economy.

Innovative system of higher educational establishments consists of objects and subjects of innovative activity. Herewith, the role of institution in this system is not the main and it implicates the organization of legal relationships connected with the rights to the results of the intellectual activity.

Legal safeguard of the results of intellectual activity is an essential process in this activity and the objects of intellectual property can be used only granting registered rights.

Speaking about the safeguard of intellectual activity, it's required, first of all, to turn attention to two forms.

1. Patent protection of various technical decisions or legal safeguard of authors' rights that higher educational institution acquired for definite time.

2. Knowhow.

While creating commercial enterprises, institutions faced some practical legal problems. They are connected with identification, admission and record of intangible assets. Let's consider stages of involvement of immaterial goods into economic turnover.

The first stage contains revelation of intellectual product by identification.

This procedure must include below mentioned activities:

1. Establishment of product availability.

2. Classification of appropriated product into group (safeguard by patent law, safeguard by authors' right, safeguard in mode of commercial secret).

3. Identification of documents establishing eligibility of the use of intellectual product, its legal review.

4. Analysis of yield income from intellectual product.

The next step is staging to accountancy according to Methodic Recommendation about inventory of rights to the results of scientific and technological activities affirmed by regulation of Ministry of State Property of the Russian Federation, Ministry of Science and Industry of the Russian Federation, Ministry of Justice of the Russian Federation from 22.05.2002 № 1272 – r/ R-8/ 149 and item 3 of Accounting Policy Regulations.

For the purpose of tax accounting the intangible value should be defined as the sum spent on its creation, including the sum paid for creation of intangible asset, payment for information and consulting services, objects delivery and salary for all employees.

Unfortunately, the situations when intangible assets that are not carried as an asset, are taken into account are quite frequent. However, it happens not always like it must be, in this case market price of intangible asset should be defined.

The next stage is realization of pecuniary valuation of the right to use intellectual product.

Such action is held, as a rule, by budgetary institution itself or with the involvement of independent expert. Valuation of intangible asset must be confirmed by the decision of general meeting of the founders of the originating institution. It's necessary to be attentive to the procedure of eligibility evaluation. To our point of view, the evaluation must be held by specialized expert, i.e. if the evaluation is made wrong, there will be negative legal consequences. The situation when the originating institution will not have any security deposit is quite possible. Besides, the participants of economic society will have subsidiary responsibility under commitment in amount of overrating of intangible assets during three years from the state registration.

And the most important stage is the use of intellectual product.

Analyzing the practice, we draw to a conclusion that there is a special commercial value for originating commercial institutions in knowhow being intangible assets. Let's point out the peculiarities of knowhow use and the problems connected with it in activities of higher educational establishments.

Part 4 CC of the Russian Federation doesn't give an exhaustive list of information forming knowhow. Though, section 1465 of CC places some requirements towards them:

1. The information should be of technical, productive, economic and organizational and other principles.

2. The information must be unknown to the third party.

3. There mustn't be any access to this information by the third part.

4. The state of commercial secret concerning this information must be introduced.

5. These data must have real or potential value.

In this case the ability of information to be an object of civil circulation is defined as commercial value.

As for the potential value, a legislator doesn't articulate this concept, although he mentions it.

The main condition of including knowhow into legal relations is an introduction of the state of commercial secret. And here the institution faces the problem dealing with the fact that the state of commercial secret is identified as confidentiality and not always organized correctly.

According to the part 10 Law 98 – FL the state of commercial secret is considered to be introduced after possessor of information compiling commercial secret assumes measures, including the following points:

1. Identification of a list of data forming commercial secret.

2. Limitation of access to the information forming commercial secret. Meanwhile, a special procedure of treatment is set.

3. Control under adherence of procedures of confidentiality.

4. Accountability of individuals obtaining an access to the information forming commercial secret.

5. Regulation of reference to the use of information forming commercial secret.

6. Application of label "Commercial secret" on the material forming commercial secret. Thereat, the holder of right of information forming commercial secret must be given.

If any of the above given measures are not taken, the state of commercial secret is considered to be unestablished.

In this context, the first what institutions must take up is to change their foundation documents that will give the authority the right to create special mechanism in order to ensure protection of confidential information [4].

The next what must be done is to analyze whether the list of confidential information is ready and actual or not [5]. The circle of people obtaining access to the commercial information must be defined by the order of a director. Confidentiality undertaking should be signed with these employees. Commitments must be included into employment agreement.

According to the section 11 of Law "About commercial secret", an employer must familiarize employees gaining an access to the commercial secret with the acquittal of employment duties and with a list of information forming commercial secret via signature.

It is relevant to remind that "Regulation about commercial secret" and "Regulation about the safeguard of employees' personal data" must be approved in an institution.

Moreover, special security means must be taken. Among them the use of codified information and the duty to keep documentation in safes can be mentioned.

An opportunity not to register knowhow doesn't' mean that fixation on tangible medium for identification in order to avoid controversies can be omitted.

For knowhow assigning under a contract the confirmation of content of data from both sides is important.

To sum it up, we can say that the provision of complex and timely measures of legal and technical plans allows the higher educational establishment to get profit from commercial realization of the rights to knowhow and to increase consumers' interest in acquisition of rights to knowhow.

Modern economy of educational system opens great opportunities for innovative growth, the main direction of which can be defined as an involvement of intellectual product into market relations and nowadays its share goes up constantly. Viewing the problems of inclusion of intellectual products into assets of commercial institutions, it's essential to point out that this mechanism isn't proven and there are a lot of legal questions in the activities of almost all organizations and these questions require detailed analysis.

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Kashkarova O.

Areas of improvement of public insurance in Ukraine

Kharkiv National University of Internal Affairs, Kharkov, pr.50 Anniversary of the USSR, 27, 61140

In this report examines the legal, economic, organizational directions for improvement of the system of obligatory insurance in Ukraine

Key words: public insurance, pension insurance, social security, insurance funds, online insurance, insurance law

In the risky nature of the market economy, which generates a variety of socio-economic situations, the modern state must provide its citizens with the necessary

types and systems of social protection. Constitution of Ukraine declares the policy of building social state whose policy is aimed at ensuring the rights and guarantees adequate standard of living for every member of society. Because state insurance plays an important role in the system of guarantees social rights, including social security, which is enshrined in Art. 46 of the Constitution of Ukraine.

At the present stage of market reforms in Ukraine in the field of social insurance has accumulated a number of unresolved issues as the legal and organizational nature: 1) lack of uniform guidelines defining the criteria necessary for social benefits, and 2) vzayemodublyuvannya certain social benefits, and 3) lack of a clear pattern of social payments to help families with low incomes, insufficient coordination of social benefits from other government expenditures, 4) lack of mechanisms to control the budgets of social funds, etc. [1, p. 135].

Exploring the problem of reforming public insurance in Ukraine, it should be noted that such insurance does not exist apart from the economic and political conditions of the country, formed at a certain historical stage of development. It is a "historical phenomenon that undergoes gradual changes in a clearly defined direction" [2, p. 20]. We believe that we should accept the NA Vihdorchykom who formulated the law of social insurance. In his opinion, it is moving towards more perfectly preserve the standard of living of the working masses [3, p. 61]. It is with regard to the requirements of this Act and to carry out further reforms in the legal regulation of public insurance.

The primary task of policy makers is to create a modern regulatory framework that will define the legal, economic and organizational principles, an effective system of public insurance.

In Ukraine the insurance systems in certain types of social insurance is based on the recognition of the universality and mandatory social insurance of persons employed. According to the legislation of Ukraine, state social insurance subject to all employees and certain other categories of workers, according to international standards [4, p. 861].

The certainty of a recognized level of social security. The total amount of aid should be sufficient to maintain good health and financial situation of the family of the recipient. Everyone has the right to a standard of living - food, clothing, housing and medical care and necessary social services - which is necessary for the health and well-being of himself and of his family. [5] States should take appropriate measures to ensure the realization of this right (Section 1, Article 11.) [6]. Provision for compulsory state social insurance in Ukraine can not be less than the subsistence minimum. The rates of pay are reviewed in the event of significant changes in the general level of wages, if any changes occur due to significant changes in the cost of living (Art. Art. 66, 67). [7] State assumes overall responsibility for the proper assistance and take necessary measures for this purpose.

In order to reform and improve the legal regulation of public insurance in Ukraine should eliminate gaps in the existing legislation. In particular, settlement management purpose insurance funds. Thus, management of insurance funds is done on a three-side switching, that is representative of the state, insured persons and employers. But today the appointment of representatives of the state and the election (delegation) representatives of insured persons and employers remains unresolved. Laws of Ukraine "On Mandatory State Pension Insurance" [8] "On compulsory social insurance against accidents at work and occupational diseases that lead to disability" [9] "On Mandatory State Social Insurance temporary disability benefits and expenses related to burial "[10]" On compulsory social insurance against unemployment "[11], this procedure is not set, but noted that state representatives appointed by the Cabinet of Ministers of Ukraine and representatives of insured persons and employers choose (delegate) the parties themselves.

From our point of view the appointment of representatives of the state election (delegation) representatives of insured persons and employers should be enshrined in the Laws of Ukraine on compulsory social insurance [12]. The provisions regarding the appointment of representatives of the state should be

regulated in the Law of Ukraine "On the Cabinet of Ministers of Ukraine" [13]. In the aforementioned law among the main functions and powers of the Cabinet of Ministers of Ukraine in the sphere of economics and finance provided by the general provisions of state insurance (Article 20). However, this law should be added under "Relations of the Cabinet of Ministers of Ukraine with funds of compulsory social insurance" that would resolve a range of issues related to the appointment of representatives of state for management purpose insurance funds on an equal footing with other subjects compulsory social insurance or matter addressed in the Laws of Ukraine on compulsory social insurance.

As part of public insurance, pension insurance also has some objective reasons for reform. Yes, some scientists say that at the present stage of social development priority in shaping social policy and social problems is the abandonment of old methods of state regulation of the formation and use of the Pension Fund of Ukraine and of the pension system. The need to reform the pension system due to a number of interrelated objective and subjective factors, among which, scientists believe the following: 1) the lack of an equivalent relation between the order of formation of the Pension Fund and rewards received from him, 2) deepening demographic crisis, and 3) imperfect mechanism of preferential and special pensions, financed by the Pension Fund and the State Budget of Ukraine, 4) increase the number of pensioners and, consequently, increasing the load on the payers of pension premiums, and 5) social justice in differentiating various pension payments categories, which is regulated by special laws on pensions [14, p. 65].

Studying the process of pension reform in Ukraine, which began in 2004, it should be noted that still remains unresolved problem of the accumulation of pension insurance. According to what the funds accumulated in individual pension savings accounts will be invested in the state's economy, which will receive investment income and promote real increase in the size of the additional pension savings accounts in the future. However, experts believe that the introduction of the storage level will be possible only if a stable annual growth of gross domestic

product by at least two percent and real wage increases insured. [15] According to economists, the first tangible results of the implementation of the pension reform, including the storage level will be felt after 2015, and then only if a stable 8% investment return on the funded component of the pension system. Specified investment income can provide enough tangible economic growth [15.] In this connection should agree to some researchers that the planned introduction of the funded pension system aimed at the gradual increase in the size of future pension benefits due to receipt of investment income and increase dependence pension of labor input per person, and thus increase the interest of employees and employers to pay insurance premiums and eliminate the impact factor of aging, which leads to the failure of the principle of solidarity financing and help form a powerful source of investment income for the national economy growth [15, p. 50, 55]. However funded component of mandatory pension insurance though was to start operating since 2007 but due to poor management and lack of legislative support, it has never been implemented [14, p. 125].

It should be noted that the reform of social insurance separately from the overall economy will not lead to any results. Increased payments directly associated with higher levels of contributions to the Social Insurance Fund. While the net increase in contributions can lead to growth of the shadow economy. To increase the level of social security in the country by reforming the need to combine measures in the following areas: improve the legislative framework in the field of social security, stimulate economic activity of the population to reduce the burden on the state and others. [16, p. 15], as well as reduce costs state social insurance funds. It is the financial cost savings fund of obligatory state social security, in our view, may substantially affect implementation in public insurance Intrenet-insurance.

Today in Ukraine began to appear only Iternet services in the insurance market. Participants insurance Internet market today is the only insurance company that represented the Internet, insurance consumers of Internet services, other professional participants of the insurance market (eg, financial institutions) [17, p.

78, 79]. For example, a common online - project "Oranta" and "plow-life" allows you to purchase insurance policy, registration application and calculate the value of the policy through the Internet [18]; Insurance Group "TAS" offered its customers a new service - order policies through the Internet [19]. For the Ukrainian public insurance, this type of online services is new and requires further study.

Conclusion. Summarizing research note that inadequate public insurance in Ukraine requires finding ways designed and its improvement. We believe that this work should be carried out simultaneously in three directions.

First. To increase the security interests of insured persons: a) to introduce direct monitoring of insurers and strengthen enforcement of insurers requirements for solvency and financial stability fund of obligatory state social security, b) improve macroeconomic performance of public insurance, c) Develop systematic guidelines for drafting action plans financial recovery fund for social insurance, d) intensify the implementation of temporary recommendations to improve the management of insurers and legal framework of their activities, and e) improve management of funds of obligatory state social security e) establish self-government in the system of social insurance in accordance with the Principles on compulsory social insurance; g) establish a system of prudential supervision, which provides maximum record in the Social Security Fund of parameters such as: materiality of risks, quality of internal control systems and risk control, proper accounting and financial reporting, identify gaps in the insurers in the early stages of their occurrence, and h) introduce the use of Internet services in the field of public security, the use of which will reduce financial expenses of the fund compulsory state social security and insurance make this area more convenient to use; i) develop and implement the requirements of the system of internal control insurers (internal audit).

Second, to ensure the sustainability of public insurance on the basis of improvement of the legal and regulatory system, supervision and control of members of the public insurance: a) to form an effective government regulation and supervision in the field of public insurance with regard to the principles and

standards recommended by the International Association of Insurance Supervisors, and b) provide further adaptation of Ukraine in the field of public insurance to EU law, c) introduce a system konrolinhu in controlling members of public insurance, d) to amend the law on the development of public insurance, and e) develop frameworks and promote the adoption of relevant laws on compulsory health insurance, e) ensure the development of effective legislation that will provide resistance using the insurance market for illegal transactions and suspicious transactions, including the laundering of proceeds of crime; g) to improve legislation regarding the procedure for insurers investigations circumstances of questionable insurance claims.

Thirdly, to establish an adequate system of professional training and certification of a public insurance and government support of scientific research in this area: a) develop and adapt programs for training of public insurance institutions of III and IV level of accreditation to the needs of the insurance market and establish appropriate requirements for teachers of public insurance, b) improve the system of professional training in the field of public insurance, c) develop a national program of research in the field of public security and training specialists.

In Ukraine, social insurance not only protects workers, but also serves as a mechanism for social investments, revenues from which are returned in the form of improved quality of life, social stability, formation of motivation to work, education and training. It has become an important means of achieving social harmony, poverty reduction. The right of employees to social insurance - one of the most important constitutional rights, compliance with which ensures legitimacy in the allocation of state revenues.

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Obraztsova IA

The budget system in the budget law

Kharkiv National University of Internal Affairs, Kharkov, pr.50 Anniversary of the USSR, 27, 61140

Report is devoted to the analysis of the content of the budget system of Ukraine. Owing to the peculiarities of the budget system in Ukraine concludes place in this category in the public law

Keywords: budget system, budget law, local budgets, the state budget, the principle of integrity, independence

Figuring the category budget system will allow us to define the outer limits of the social relations that fall under the regulatory influence of norms budget law. The above thesis is based in particular on the idea that the budget-regulation may be made only within and on budget system. Accordingly, the larger is the amount of the budget system, the greater the scope and budget, and conversely.

Analysis of scientific literature shows that there are now a considerable number of definitions of the budget system, and therefore it is necessary to review the most common position expressed in the pages of legal literature on this subject.

The budget system is the basic unit of the financial system of the state, which depends on the form of government and consists of state and local budgets. The relationship between the state and local budgets are based on the unity of the budget system and financial policy [1, p. 253].

The most common in economic theory is to determine the budget system in terms of its structural and functional construction, and therefore during the last refers to the set of all budgets, operating in the country [2, 52-56.].

According to AI Brezvin budgetary system of Ukraine can be defined as economically reasonable and legislated set of state and local budgets, on the basis of which is determined by the order and conditions of the revenues and expenditures of the state with regard to its economic, political and other interests and needs and to ensuring the implementation of the rights and freedoms of citizens [3, p 224.].

Somewhat different approach to this issue Russian scientists, who, under the budget system of the Russian Federation suggest understood set of budgetary and extra-budgetary funds of the Russian Federation; system of intergovernmental relations, members of intergovernmental relations, legal framework budget activity [4, p. 16]. However, in our view, this approach to determining the budget system is somewhat inconsistent with the general theory of systems. In this case that your system formation (budget system) includes diverse and riznoporyadkovi subsystem formation (system of intergovernmental relations, fiscal relations system participants, the system of regulations), each of which, in fact, forms an independent system.

The above definition of the budget system, although different from each other

certain elements, but in general, in our view, are identical. All of them, as shown by the analysis, united around the idea of the unity of the state and local budgets, which, in fact, constitute the budgetary system of Ukraine. The above position also shared by the legislator, who in the current legislation strengthened the position that the Ukrainian state budget system consists of the State Budget of Ukraine and local budgets: the budget of the Autonomous Republic of Crimea, the budgets of villages, towns, cities and their associations, budgets districts city, district and regional budgets (Article 5 of the Budget Code of Ukraine).

However, we have a question on that subject, and whether a similar approach to the budget system requirements of today as well as some provisions of the Constitution of Ukraine. In this case that the inclusion in the budget system, not only the state budget, but the budgets of local governments can be seen as limiting the financial autonomy of the latter. Let this thought more.

Currently, the largest component of the budget system is a local budgets, which in our country there are almost twelve thousand. With local budgets annually distributed approximately 15% of gross domestic product, which focuses almost 35% of budget resources [5]. With this in mind, it becomes clear desire of the state, especially in the face of the Cabinet of Ministers of Ukraine have, in fact, at its disposal such significant budgetary resources that can be used to address the most pressing, according to the government, national problems. However, as we understand such a reallocation of budget funds is not always carried out taking into account the interests of local communities as a result can nedooderzhuvaty financial resources they need for their own purposes.

Such "interference" in the financial life of the local government, in our opinion, violates, first enshrined in Art. 7 Constitution of Ukraine the independence of local governments from the state, and secondly, contrary to § 1 of Art. 142 of the Basic Law, which states that material and financial basis for local self-government is movable and immovable property, revenues of local budgets, other funds, land, natural resources, which is owned by territorial communities of villages, towns, cities, districts in cities and objects of their common property that are managed by

district and regional councils, and thirdly, part of the imbalance of Section 3 of the Verkhovna Rada of Ukraine "On the recommendation of the parliamentary hearings on the legal aspects of regional policy and local self-government" of 05.06.2003 p . № 939-IV which was named among the priorities the creation of legal, economic and organizational conditions for the formation of communities that have had a material, financial and other resources in an amount sufficient to effectively implement the tasks and functions of local government, providing real independence of local budgets, etc. [6].

Along with this, we note that formulated our opinion agrees well with the position of the Constitutional Court of Ukraine, which is one of his decisions emphasized that the legislation now enshrined the principle of autonomy of local budgets. This principle is that they are not included in the State Budget of Ukraine, Autonomous Republic of Crimea and other local budgets and their own independence is guaranteed and vested in them by law on a sustainable basis by national income, as well as the right to determine the uses of local budgets according to the law (part six of Article 16, part four of Article 61 of the Law of Ukraine № 280/97-VR from May 21, 1997 "On Local Self-Government in Ukraine", paragraph 3 of Article 7 of the Budget Code of Ukraine). Local budget revenues recognized tax, non-tax and other revenues on irrevocable basis, charged under the laws of Ukraine, in particular transfers (Article 9 of the Budget Code of Ukraine). This provision of the Budget Code of Ukraine, according to the judges of the Constitutional Court of Ukraine, is consistent with Article 142 of the Constitution of Ukraine, the first part of Article 62, the third paragraph of Article 66 of the Law of Ukraine № 280/97 of 21 May 1997 "On Local Self-Government in Ukraine" according to which the state financially supports local governments involved in the formation of its revenue budgets and ensures local government revenue base sufficient to ensure public services at minimal social needs [7].

In the perspective of this conversation not to mention also of the European Charter of Local Self-Government [8], § 1 of Art. 9 which establishes provisions, local authorities shall be entitled, within national economic policy on their own

adequate financial resources which they may dispose freely within their powers.

So, based on the foregoing, it is clear a paradox, which is that, on the one hand, the legislation recognized the independence of the budgets of local governments from the state and the state budget in particular, and the other - in the Budget Code of Ukraine establishes the principle of a single budget system. This principle, in our view, inherited a legacy from the Soviet theory of the budget law, which, in turn, was based on a strictly centralized system of governance, which is not known, nor the separation of state or local government institution. Clearly, in such circumstances, the question of the content of the budget system was carried out automatically with simultaneous recognition of the fact that all the budgets of countries make up a single and indivisible system.

However, the question on the subject of how a similar approach to the budget system meets the requirements? Responding to a question first of all, in our opinion, attention should be paid to the relevant provisions of the European Union, as it was with him, according to the Law of Ukraine "On the National Program Adaptation of Ukraine to EU law" [9], should be coordinated national legislation . The analysis, in particular, showed that in European countries, such as Germany, the federal budget and the budgets of local governments within the same system in the legal sense of the word. The legal order of their formation, approval and implementation is governed by different regulations. [10] With this in mind, all legal issues relating to the budgets of local governments are the subject of municipal law [11, p. 281].

Note that similarly to this question are also suitable and Ukrainian representatives Science municipal law, emphasizing the fact that the system of national municipal law consists of a set of legal institutions, one of which is the institution of local budget and local finance [12, p. 26]. Such scientific position is not yet found widespread, however, we believe that this is due only to the lack of elaboration of the theory of municipal law. Eventually, when the final selection will be made in municipal law independent branch of law, the issue of regulation of local budgets will come increased relevance.

Thus, considering the above can come to the following conclusion, which is that

regulation limits the budget law depends on the category "budget system". Now, at least on a theoretical level, shall intensify the trend towards separation of state and local budgets, and if so, the only current budget law may in future be divided into two elements, in fact, the budget law (the body of law governing social relations on the formation, distribution and use of funds of the state budget) and the Institute of local budgets (set of legal rules that govern social relations on the formation, distribution and use of cash budgets of local governments*) that will join the content of municipal law.*

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Tishchenko A.

LEGAL BASIS OF ACCOUNTING

Kharkov National University of Internal Affairs, Kharkov, pr.50 Anniversary of the USSR, 27, 61140

Report is devoted to the analysis of the legal basis of accounting, as a specific financial control method, certain types of regulations that establish the authority of the subjects of financial and tax control

Keywords: *accounting, financial control, tax control, law, methods of financial control, subordinate legislation.*

The financial control among a large number of research methods most devoted to verification and audit, only a small portion of them are talking about accounting. Studies devoted to the consideration of legal persons as subjects of financial control in general units, and given the frequent changes in the financial and tax legislation currently there is a need to carry out such a study. Because the purpose of this article should be considered legal analysis of the basis of accounting as a method of financial control and its kind of tax.

Problems of financial control, financial control methods is the object of constant attention O.D. Vasylyk, L.I. Voronin, O.P. Hetmanets, V.N. Karpov, R.V. Kosynsky, V.F. Role, L.A. Savchenko, V. K. Symonenko, V. Shutova and other scientists. However, due to constant changes and amendments of legislation was not considered a number of innovations on accounting.

The essence of accounting is that it is specific financial control method, which is used primarily in business regulatory authorities in carrying out registration of control (ie taxpayers) or in other cases specified by law. It is not limited to registration work, and also includes analysis and a database [1, p. 67-68].

Under the current Tax Code of Ukraine provides for the method of accounting control actions during tax registration of taxpayers and objects that form the basis of calculating the tax obligation. This method is differentiated into:

- Taxpayers, that is liable parties when including data about them to the appropriate registers, changes to records;

- Records of income, expenditure and other indicators relating to the objects of taxation (tax liability), ie objects (funds, material resources), which bind the duties arising from the movement of funds in the budget in the form of taxes and fees. [2]

In Ukraine there are several actors who perform accounting entities that is later used for financial control. The first and one of the biggest is the Unified State Register of Enterprises and Organizations of Ukraine (code) [3]. This register is an automated system of collection, storage and processing of data about entities of all forms of ownership, organizational and legal forms of business, subdivisions of legal entities on the territory of Ukraine, as well as subdivisions of legal entities of Ukraine that are outside. The subjects of the Unified State Register of Enterprises and Organizations of Ukraine is a legal entity separate units and legal entities of all forms of ownership and organizational forms of management that are found on the territory of Ukraine and conduct their activities on the basis of its laws.

This register is maintained in order to ensure uniform state accounting and identification of subjects. Subjects assigned a single identification number from the Register is kept by him during the period of its existence. Keeping the Uniform State

Register of Enterprises and Organizations of Ukraine assigned to the State Statistics Service of Ukraine. The data contained in the Registry is open and public, except those related to manufacturing and financial and economic indicators in the activity of [4].

Recently, legislation in Ukraine is changing towards simplifying procedures for business, but supervisory powers extend. Specifically, under the Cabinet of Ministers of Ukraine № 949-p dated October 17, 2012 № 949-p "On amending some provisions of the CMU on filing the certificate of incorporation into the Unified State Register of Enterprises and Organizations of Ukraine" [5] and the Law Ukraine on May 24, 2012 № 4839 "On Amending Certain Laws of Ukraine on registering legal entities and private individuals - entrepreneurs" [6], Ukrainian companies will be freed from burdensome procedures for obtaining and submitting to Tax Help for inclusion in the Unified State Register Enterprises and Organizations of Ukraine (code).

Innovation of these regulations is that in his work the State Tax Service will own, without involving taxpayers to use information from the Unified State Register of legal entities and natural persons - entrepreneurs, as well as data from the departmental database of statistics, the Pension Fund of Ukraine other institutions. Now is the process of automatically transferring data from the code into the Unified State Register of entering data on registration in the State Tax Service, pension fund, state statistics. By reducing the number of required documents and the time it takes to receive them will simplify tax administration procedures for Ukrainian business. In addition, entrepreneurs zekonomlyat not only time but also money, as reference code was paid. [7]

Information and reference services to the users code is carried out according to the requirements of the order and conditions of use to the Unified State Register of Enterprises and Organizations of Ukraine. The information contained in the Register is open and public, except as provided by law. Users Register are legal entities (their authorized representatives in the presence of a properly executed proof of their powers) and individuals who have submitted a written request for the information [8].

At the state level code contains information on subjects in the whole country, the territorial - for business in the territory. The basis for inclusion in the Register or exclusion from the data subjects, as well as amendments to the Registers revenues from the State Registrar to the state statistical information about the commission registration activities, the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" [9].

Unified State Register of Enterprises and Organizations of Ukraine (code) is close to the Unified State Register of legal entities and individual entrepreneurs, which aims to ensure the rights of creditors and others by disclosure of the legal entity or entrepreneur. Thus, the filing of a legal entity by the statistics, the state tax service, the Pension Fund of Ukraine directly related to the performance of their obligations under centralized and decentralized mobilization of funds and are inherently specific financial-control method.

The transfer of information from the registration card for the state registration of the legal entity to statistics, the state tax service, the Pension Fund of Ukraine for taking legal entity at the state registrar shall on the day of registration. The basis for the legal entity registered in the statistics, the state tax service, the Pension Fund of Ukraine is the receipt of these data from the registration card for the state registration of legal persons [9, p. 26].

Another aspect that is reflected in the Unified State Register and is used in the implementation of financial control is the registration of amendments to statutory documents. State Registrar not later than the next business day to pass the state registration of amendments to the constituent documents of a legal entity shall submit the relevant authorities of Statistics, the state tax service, the Pension Fund of Ukraine information from the registration card for the state registration of changes in statutory documents indicating the number and date of corresponding entry in the Unified State Register [9, p. 31].

Accounting for legal entities as subjects of financial control is used in order of state registration of the termination of a legal entity on the basis of judicial decisions unrelated to the bankruptcy of a legal entity. In particular reason for a court decision

to terminate the legal entity that is not related to the bankruptcy of a legal entity is a failure during the year to the State Revenue Service tax returns, documents, financial statements in accordance with the law. Information about the existence of the taxpayer to the state tax service obtained from the Unified State Register. Providing the authorities with information registration cards to commit registration activities allows them to further control actions in their areas to raise part of the funds from their owners in the state. That content appropriate budgetary funds through the state: taxes, levying taxes and mandatory fees, mandatory insurance. This work involved the State Tax Service of Ukraine, the State Statistics Service of Ukraine, the Pension Fund of Ukraine, the Social Insurance Fund for Temporary Disability Fund of Obligatory State Social Insurance of Ukraine in case of unemployment, social insurance against industrial accidents and occupational diseases in Ukraine.

Each of these bodies is a registry, including legal entities as subjects of financial control. These counts are formed in the form of electronic information resources. These, in particular, include the following registrations entities: the State Registration Service of Ukraine - Single state register of legal entities and individual entrepreneurs, the State Statistics Service of Ukraine - United State Register of Enterprises and Organizations of Ukraine, the State Tax Service of Ukraine - Single database on taxpayers tax entities, which is part of the State register of natural persons - tax and other obligatory payments; Pension Fund of Ukraine - State Register of compulsory social insurance [10], the Social Insurance Fund for Temporary Disability - Single Register policyholders the Social insurance for temporary disability, the Social Insurance Fund Accident - Register insured by compulsory state social insurance against accidents at work and occupational diseases that lead to disability; Foundation compulsory social insurance against unemployment Ukraine - Register payers insurance premiums. [10]

Conclusion. If the Tax Code of Ukraine there are a number of laws and regulations that contain provisions that require the direct application of accounting entities under centralized and decentralized mobilization of funds as a method of financial control. Summarizing the analysis of the legal principles of accounting as a

method of financial control should point out that a number of government provides for these subjects that is later used regulatory authorities to ensure the legality and appropriateness of financial discipline in the mobilization, allocation and use of centralized and decentralized cash assets and dressings connected with matériel. Between these bodies there is interaction with the exchange of information concerning the provision and use of information from their registers. However, the agreement requires the existing regulations that define the accounting for business entities to simplify the control procedures.

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HOUSING LAW AND HOUSING PROCEDURES IN UKRAINIAN LEGAL SYSTEM

The article provides research of general features of housing law and housing procedures in Ukraine and defines its correlation and place in Ukrainian system of law.

Key words: housing law, housing procedures, housing and procedural provisions, housing and procedural law, law.

As of today the practice of implementation of the provisions of housing and procedural law in Ukraine outruns the theory, which does not define clearly the place of housing and procedural law as well as housing process.

The aim of the present article is to research correlations between the housing law and housing process, as well as define their place in Ukrainian legal system.

Scientists clearly concluded that the housing law belongs to the material branch of law [1]. I.Galagan and V.Glebov proved that in any material branch of law there

are procedural provisions [2]. Procedural provision means a rule, which regulates legal process [3].

Having analyzed provisions of Housing Code of Ukraine dated 30 June 1983 (hereinafter – HC) [4], as well as laws of Ukraine in the field of housing law, we concluded that there are both material and procedural provisions in the housing legislation. Housing and procedural norms include provisions designated to regulate an order (procedure) of implementation of material provisions of housing law. For instance, it goes about the procedure of registration of citizens who are in need to improve the housing conditions (article 39 of HC) etc. Besides, procedural rules are also incorporated into laws of Ukraine, for instance, into the Law of Ukraine "On privatization of public housing funds" dated 19 June 1992 (article 5 of the mentioned above Law) [5].

The science of procedural law characterizes legal process as procedural actions and procedural relations (Y.Belousov, A.Getmantsev, I.Zaitsev, M.Treushnikov, S.Fursa, M.Stefan, V.Yarkov) [6]. Housing process as a type of legal process could be also interpreted through the housing and procedural actions of participants of such relations.

Provisions of housing and procedural law are the basement for establishment of housing and procedural relations, their development and termination through definition of behavior of participants of housing and procedural relations. Collectively housing and procedural provisions act as procedural and legal means of implementation of provisions of housing law.

The housing process creates relations which form dynamic system. Housing and procedural relations – means cooperation between public authorities, its officials, owners of public and municipal housing funds, on one hand, and individuals (participants of the process) on the other hand, as a result of realization by them of their procedural rights and obligations through procedural actions.

The housing process includes, for instance, the following procedural undertakings on housing issues: judicial proceedings regarding permanent use of residents by citizens, judicial proceedings on issues related to obtaining residence in

ownership (privatization) etc. Each case includes such key stages as: initiating of housing procedures (if unquestionable), considering of the housing case, making decision on the case. Actions of competent authorities and officials can be challenged (appealed) by the interested persons at each stage.

Housing process, being an independent type of judicial process and having a status of independent branch of procedural law of Ukraine, has its subject and method. Subject of housing process means public relations, existing in the field of housing proceedings among participants of housing and procedural relations, as well as procedural activity itself aimed at realization of such relations. Method shall be dispositive and imperative.

Housing law, housing process and housing and procedural law are different legal categories.

The legal science narrowly defines housing law as collection of legal rules which regulate housing relations. Our understanding is that the housing process means activity of participants of housing and procedural relations regulated by the provisions of housing and procedural law at each stage of housing proceedings aimed at realization of provisions of respective material branches of law.

Having analyzed provisions of housing and procedural law, it is necessary to outline its close relation to material rules of housing law, as well as, for instance, to the provisions of constitutional, civil, succession, land, and labor law.

Conclusion: housing law, being a complex branch of law, as well as the housing process, as a type of legal process, are integrated into Ukrainian law system, have their own subject and method. Procedural stages and procedural proceedings on housing issues are the elements of housing process.

Housing process means procedural order of establishment (initiation), development and termination of procedural relations regulated by the provisions of housing and procedural law.

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Yu.V. Onishchyk

FINANCIAL AND LEGAL STATUS OF CUSTOMS AUTHORITY OF EU STATE MEMBERS

National University for State Tax Service of Ukraine

Introduction The significance of the customs element of the economic policy has increased dramatically with globalization of the world economy and strengthening of interdependence of the states. National customs regulation may not be functioning unless international norms and treaties are accounted for, together with their implementation into the national legislation. Entry into and signature of Partnership and Cooperation Agreement between Ukraine and European Communities and their member states in 1994 produced respective effect to push the Ukrainian customs legislation to come closer to the European one leading to the rank of international commitments. Thus, Article 51 of this Agreement states that parties

acknowledge that a significant condition to strengthen economic relations between Ukraine and a European Community is to approximate the existing and forthcoming legislation of Ukraine with the legislation of such European Community.

According to Section 1 of Law of Ukraine № 1629-IV *On Nation Wide Programme Related to Adaptation of the Ukrainian Legislation to EU Legislation* dated 18 March 2004, adaptation of the Ukrainian legislation to EU legislation is aimed at achievement of respective legal system of Ukraine of *acquis communautaire,* taking into account the criteria put forward by EU to the states that intend to join up, whereas in Section V of the above Law the customs regulation is referred to the priority area. Consequently, the issue of approximating the legislation in connection with the customs field is regarded by the parties to relate to such areas where Ukraine should primarily focus its attention.

In addition, it should be noted that creation of the EU customs union has significantly affected the activities of domestic customs authorities of Member States, for it is the latter due to support of which the implementation of customs legislation may take place. With certain steps and actions being taken in order to procure that customs legislation apply accurately and correctly together with other legislation that regulates import, export, transit, transfer, storage and final use of goods transited within the customs territory of a relevant European Community and other territories, as well as presence and transfer within the customs territory of the goods that do not originate from such Community and the goods placed under the customs regime of release for domestic consumption, the customs authority are the main participants of customs legal relations and are in charge of the interests to be met for the entire Community [1].

At the same time, a wish of Ukraine to enter the EU single economic space will inevitably cause reorganization of the customs authorities. Consequently, there arises a necessity to implement the experience of the customs authorities of EU Member States into the Ukrainian system of state bodies. Therefore, at present study of the legal status related to the customs authorities in UE states triggers an interest not only of theoretical value but also of practical nature. In confirmation of the above, kindly

regard the analysis of scientific works connected with this matter [2, 3, 4]. Furthermore, it is worth mentioning that both national and foreign literature may prove that the issue associated with financial and legal status of the customs authorities of EU Member States has not been entirely studied yet.

In this respect, let's emphasize that after the integration of the sates into EU, their customs sovereignty has been limited resulting in expansion of the powers of domestic customs authorities. The legal background for the activities of the customs services of EU Member States are governed both at the level of the Community and by means of the norms derived from the domestic laws of EU states. Thus, with study of trends in functioning of modern customs authorities of EU states, the legal norms of the Community and EU Member States should be accounted for.

The priority provisions of the activity organization connected with the customs authorities of EU states are prescribed in the Customs Code of the European Community (hereinafter referred to as the CCEC). According to Article 4 of the CCEC, the customs authority means customs administrations of member states, which are responsible for application of the customs legislation, including other government agencies duly authorised in compliance with the domestic laws to apply the customs legislation in its relevant part. The customs authority is mainly in charge of control of the international trade in the Community, thus, supporting fair and open trade, implementation of external aspects of the internal market, common trade policy and other common policies of the Community aimed at the trade support and provision of supply chain security on the whole. The customs authority takes measures directed in particular at protection of financial interests of the Community and member states, protection of the Community against unfair and illegal trade, and at the same time, support of lawful and legal commercial activities, providing protection of and security for the Community and its residents, with protection of the environment based on close cooperation where as accepted with other government agencies the provision of a due balance between the customs control and development of lawful and legal trade is witnessed [1].

Given the above it may be noticed that domestic customs authorities of EU states rather face a much wider circle of tasks than mere execution of powers by the customs services of emerging states. The provided tasks of the customs authorities of EU states are scrutinized in detail in domestic legal acts. For instance, in France and Belgium the tasks of the customs services are prescribed in respective codified acts (the Customs Code), whilst with the rest of EU states such are normally implemented in the laws: see, as an example, the German Law № 2125 *On Customs Administration* dated 21 December 1992 [5], the Finnish Law № 1466 *On Customs Service* dated 29 December 1994 [6], the Polish Law № 168 *On Customs Service* dated 27 August 2009 [7], the Italian Law № 349 *On Customs Service of the Republic of Italy* dated 10 October 1989 [8], the Slovenian Law № 1369 *On Customs Service* dated 17 June 2004 [9], the Lithuanian Law № 2183 *On Customs Service* dated 27 April 2004 [10]. It is these regulations where the legal status of the customs authorities of EU states is highlighted and specified.

With majority of EU Member States domestic customs services are not found as independent state bodies, as they report directly to Ministries of Finance of such states respectively and are part of such Ministries, for instance, the Department of the Customs Service of the Ministry of Finance in Poland, the Customs Department of the Ministry of Finance in Lithuania, the General Bureau of the Customs of the Ministry of Finance in Finland. Herewith, it should be underlined that some states are known to hold the customs authority combined with the tax services related to levy of excise duties and other indirect taxes. Such state bodies have been established in Germany as the Department of duties, excise duties and taxes imposed on consumer goods, in France as the Central Management of Customs and Indirect Taxes, in Italy as the Department of Customs and Indirect Taxes, in the United Kingdom as the Royal Service of Customs and Excise Duties, whereas in Denmark as the Customs and Tax Directorate, and in Luxemburg as the Department of the Customs and Excise Duties, etc. At the same time, it is worth mentioning that there are other instances in regard of the place connected with the customs authorities in EU states among and in the system of executive bodies. Thus, the customs service of Sweden is an

independent body of the executive power, and the Bureau of the Customs of Hungary is a structural unit of the General Bureau of the Customs and Financial Protection of the Ministry of Finance.

The structure of domestic customs services is determined by domestic needs of each state and significantly varies from state to state. The organization model of a departmental management of a customs service in foreign states on the overall looks homotypic. This is central customs authority, i.e. the higher level, regional customs bodies, i.e. the medium level, and the customs, i.e. the bottom level, correspondingly. As regards the competence of the central customs authorities of the EU states, such as the Bureau, Department, Directory, it includes the issues related to performance organization of the customs authorities and procurement of homogeneous customs activities within all the territory of a respective state. In their turn, regional customs bodies and the customs respective of their location, i.e. near-border passes, airports, sea and river ports, stations, economic centres, carry out the customs control, customs registration, and processing and clearance of goods and transportation vehicles as well as levy of the customs payments imposed.

The key function of the customs authorities in EU states is the fiscal function. With procurement of levy of customs payments, control over accuracy and exactness of calculations, payment in good time and in full, the customs services of EU Member States play an important role in formation and accumulation of profits for both a relevant state and the Community. Customs payments include the payments imposed with the goods while crossing the customs border. Such, first of all, will comprise the customs duty, excise duties, value added tax. There are other payments levied in different states. However, such to some extent may also be referred to customs payments. Thus, Germany is known for agricultural taxes, taxes related to transportation vehicles, highway tax, whereas Great Britain arises with its cinematography development taxes and levies, levies connected with navigating a vehicle to the waterway, port levies [11], and Italy has special levies, such as embarking and disembarking a vehicle, radiolocation, traffic movement, together with impact fees for customs functioning (for use of materials, equipment, transport)

[12], France is known for its oil taxes, oil processing tax, specific tax on oil produce, a special transportation vehicle tax known as so called ‘wheel tax’, air transportation vehicle tax [12]. All the above, in our opinion, has caused integration of the customs and tax services in many EU states, for with view to their nature such activities turns similar and focuses, first of all, on accumulation of financial resources of the budget systems in respective states.

Among the powers aimed at the implementation of financial legal status of the customs bodies in EU states, the following should be noted:

(i) documentary examination in regard of compliance with the legal customs requirements grounded on timely, accurate and exact, and full accrual and performance of respective customs payments that fall due and payable;

(ii) control over correctness of determination of the goods customs value;

(iii) decisions related to benefits and/or exemptions;

(iv) special tax control in the area of manufacture and circulation of excise goods, i.e. associated with payment of excise tax, which allows for control over manufacture, transportation and circulation, including without limitation export and import, a number of excise goods, gambling organization (opening and closing casino gambling tables, establishment of ceiling rate and compliance with other gambling norms); manufacture/produce and circulation of bio-components contemplated in respective legal norms;

(v) economic supervision in order to procure the rules of the single economic policy are met;

(vi) powers in the area of currency control and supervision of settlement and payment transactions in external / foreign trade;

(vii) governance in the area of foreign currency control [13].

The most powerful and effective form of tax and customs control appears to be documentary examination. With execution of such examination the customs bodies may demand a customs applicant submit other documents to check correctness and

accuracy of the data contained in a declaration, as well as the bodies may make adjustments to the declaration after release of goods, examine commercial documents or the data that refer to import or export operations in regard of such goods or other commercial operations connected with such goods [13]. Such examinations may be carried out on the premises of the customs applicant or other person directly or indirectly relating to this operation, or any person that possesses the above documents and the data for the purpose of commercial activities. These bodies may also examine the goods on the premises of their manufacture or produce. In an event the examination of the declaration or the examination carried out after customs clearance indicates that a certain customs procedure was carried out on the basis of the incorrect of partial information, the customs authority may take necessary steps and measures to settle the situation accounting for the available information [13]. According to Article 27 of the CCEC, the customs authority may, after release of goods in order to verify the records specified in a concise and customs declaration, check and examine any documents and records connected with such goods, or on commercial transactions carried out before or after release of goods, where such goods appeared. The decisions taken by the customs authorities are effective and enforceable within all the territory of the Community [1].

Given the fact that at the internal borders of the European Union there is no possibility to take control of sub-excise goods, a new supervisory system in relation to such goods has been created. The most significant element of such system is ‘the system of interconnection between the tax warehouses’ that allows for tax free transportation of goods from one warehouse to the other within the entire EU and levy of taxes only in the country where such goods are going to be consumed. Due to the above the customs activities transfer from the borders to enterprises. In such a case, subdivisions in charge of examination carry out central supervisory functions, thus, controlling goods circulation by means of registration data and goods inventory. The goods that have been taxed in other EU countries are not subject to such control. For passenger flows within EU the sub-excise goods, save for several types of

mineral fuel, are fully tax exempt except the cases where significant number of such imported goods triggers possibility of their use for commercial purposes [13].

Financial and legal aspect of customs activities in EU states is as well reflected in their financing that is carried out from the state budget of a relevant country.

Unlike Ukraine where the customs authorities are fully financed by the government and the legislation does not allow for other methods for receipt of financial resources, Poland has the law *On Public Finances* that stipulates that budget units among which customs bodies are found may form their own funds by means of collection of payments related to organization and holding of training courses, issue of qualification certificates, receipt of funds under gift agreements, inheritance agreements, interest under deposits of own funds, etc. [14].

Conclusions

To sum up the above, it should be noted that the European Union is a form of cooperation of the states that constitute its part and shall comply with their common policy in accordance with the unified rules and norms resulting in harmonized and balanced legislation of each EU state.

With entry and integration into EU, Member States abandoned major part of their customs sovereignty entitling ‘the single European lawmaker’ with the powers in regard of legal governance in the customs area. The customs relations of EU states are covered both by legal regulation at the EU level and domestic legislation of EU Member States. The norms of the customs legislation in EU are of unconditional priority in regard of legal force over the norms of domestic customs legislation in EU states. The decisions taken within EU on principal issues of customs governance either are of express effect, or are incorporated in the laws of EU states by means of respective domestic legal acts to be passed.

In this respect, domestic customs authorities of EU states rather face a much wider circle of tasks than mere execution of powers by the customs authorities of emerging states. The legal status of customs services in EU Member States is regulated both at the Community level and by means of domestic legal norms of EU states. Priority provisions of activity organization by the customs bodies in EU states

are in the basis of the CCEC. The provided tasks of the customs authorities of EU states are scrutinized in detail in domestic legal acts.

With majority of EU Member States domestic customs services are not found as independent state bodies but such report directly to Ministries of Finance of such states respectively and are part of such Ministries. Herewith, it should be noted that with some states customs bodies integrate with tax authorities with view to levy of excise duties and other indirect taxes. The background for such integration of customs and tax services with many EU states has become the fact of their similar activity by nature which, first of all, lies in accumulation of financial resources of the budget systems of respective states.

The customs services of EU states are characterized by integrity of their aim, tasks, functions, principles of activity organization accounting for domestic peculiarities of the state system. Based on the changes that have taken place in Europe, the activities of the customs authorities of EU Member States have been subject to change as well. The customs authorities changed and expanded their activities in a lot of areas including financial, in particular. It is necessary to note that in an event Ukraine enters the European Union, the customs authorities of our state are going to obtain new powers, the structure is going to be changed as well as the legal status on the whole.

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Leonid Belkin

THE VIOLATIONS OF LEGALITY IN THE PUBLIC STATE AUTHORITY FUNCTIONING AS A DETERMINANT OF ITS DELEGITIMATION

Consulting company "Analityk", Donetsk region, Ukraine

The article deals with the correlation between the violations of legality regime in the public state authorities' operation and the condition of its legitimacy. It was demonstrated that the violation of the legality regime results into the delegitimation of state authority. The features and mechanisms of such delegitimation were analyzed by an example of the Ukrainian state authority in 2010-2012.

Key words: public authority, legitimacy, delegitimation, natural law, positive law, authorities' credibility.

Legality (from lat. legitimus – correspondent to law, legal, legitimate) – a public consent to authority, when people voluntarily recognize its right to take compulsory decisions. The lower the level of legitimacy, the more often the authority would rely on the force compulsion [1].

The number of scientific studies dedicated to the problem of legitimacy is limited [2-4]. Legitimacy is said to be guaranteed automatically, as a result of legal formation of the authorities, according to the positive law. According to R. von Ihering, one of the founders of legal positivism, any state authority, even the one that uses coercion in its operation, is legitimate, as only the state authority itself can determine, what is legal and what is not [3]. The natural law is considered to be the universal controller, and the positive law can only more or less accurately reflect the natural law. According to L. Korchevna, fixing the natural law and social compact as a basis of the Ukrainian modern legal frame on the constitutional level (Preamble, sections 1, 3, 5, 6, 8, 19, 21, 22 etc. of the Constitution of Ukraine) proves, that we have recognized the European legal tradition in the studies of state and law. Henceforth, the theory of natural law is endorsed into the current legislation of Ukraine [5]. That is why the principles of natural law do not grant the a priori legitimacy to the authority.

The recognition of the natural law concept provides for the acceptance of the priority of personality before the authorities, as well as the government accountability to the society. Herewith, due to these or that reasons, people can make positive evaluation of the authority, which centers an imperative power, recognize its right to make administrative decisions and be ready to voluntarily obey to them. Such interrelation between the authorities and individuals is usually called legitimacy. The legitimate power is assessed by people, who recognize it, as fair and impartial. Legitimacy also confirms the authority's prestige, and its conformity to the major value navigators of the most citizens [6]. Legitimacy reflects the common social attitude to the authority; it can be defined as a state of authority, when it is recognized by the majority of people as lawful and fair [7]. That is why, though legitimacy has its own mechanisms of manifestation, it is based on the compliance with the legacy regime.

The basic principles of the legitimacy theory were laid down by M. Weber, whose ideas are considered to be classical in politology [8]. He distinguishes the three possible types of authority's legitimacy, according to its sources [7, 8]: a) traditional legitimacy that relies on tradition and order established long time ago (gerontocracy – the rule by elders; patriarchal – the rule of tribal chiefs; patrimonial – the rule of monarch;

sultanism – a variety of patrimonial rule; the sovereign rule over feudal-vassal, which dominated in the Middle Ages); b) charismatic legitimacy, based on the credit to the personal features of the leader; c) legal (rational) legitimacy, has rationally established rules and norms (laws) as a source; this is the major type of legitimacy in democratic societies, which is based on the constitution and particular norms of the law.

According to M. Weber [8], legal rule is based on the importance of the interdependent ideas, namely: a) any law can be constituted through the conclusion of a treaty, which is oriented rationally, aim-rationally or value-rationally; b) every law consists of abstract, specially established rules, the implementation of which is controlled by the courts; c) legal master – chief manager, who, when giving orders and instructions, is guided by the impersonal order; d) when rendering obedience to the master, they does not submit to his personality, but to the impersonal order, so they must obey only within the limits of practical competence, rationally differentiated by this order.

Thus, if legitimacy is based on law as the direct result of social agreement, equally binding both for the governor and governed, then violating law by the governor decreases its legitimacy and causes the delegitimation of his power. According to the social agreement theory (J. Bodin, T. Hobbs, J.-J. Rousseau, J. Lock, Ch. Montesquieu) [9], in case when the authorities violate the law as a social agreement, the nation has a right to rise in active opposition.

Y. Miroshnychenko [4] regards legitimacy in the unity with lawfulness, pointing out that in this system the idea of legacy is beginning to set up as a basis for democracy, legitimacy and justice – as an important factor for positive perception and implementation of state political decisions. The society readily perceives the idea of legality only through the idea of legitimacy, thus, the main duty of theorists and politicians is to use this channel for the consolidation of democratic values.

The textbook [10] refers to the legitimacy of power as: a) its legacy, or establishment through means and ways, which are considered as fair, appropriate, legal, moral; b) its support by the population; c) its international recognition.

The research work [2] represents the correlation of legitimacy and legacy as a formula: f (*x*) = 1/ *Z*, where "*x*" is a level of public authority legitimacy, "z" is a level of the law "deuniversalization". Thus, any attempt of the law deuniversalization either causes the direct decrease of the authority legitimacy level, or, in combination with other factors, creates the basis for the public authority delegitimation in future.

Normally, after the obtainment of power, the authorities can temporarily ignore the loss of legitimacy as a loss of public credit and consent. But, eventually, this can become harmful for the authorities themselves with a prospect of its complete ruining. According to V. Volinets, the delegitimation of the authorities is a complex impartial political process, when as a result of the state authorities' action or inaction, as well as the rejection of the propagandized aims of state policy, these bodies of state authority are seen as those, whose actions does not conform to the social interests, and the way of their existence enters the collision with the functions to be implemented according to their constitutional status and tasks entrusted by the society. Acquiring the features of irreversibility, this process entails the change of the most fundamental levels of the state existence and functioning. The main risk of delegitimation is the destabilization of both the system of state and political administration, and the political system as a whole [2].

By an example of modern Ukraine this can be illustrated in the following way.

1. «Hacker» attacks as a result of non-judicial shutting down of ex.ua web-site [11]. As far back as 2002 professor I. Aristova [12] considered "information society" as a civil society with developed information production. Thus, the aforementioned attacks, though imperfect and primitive, are the demonstration of the public nonconfidence to the government. Then the Minister of Internal Affairs, V. Zakharchenko, surprisingly pointed out [13]: «Those people, who in due time submitted applications about the infringement of copyright, on the ground of which the prosecution was commenced, later came to the Ministry building with the protest action. As for me, I was alarmed by another fact – the reaction of the society. Lots of people couldn't hush up their joy, because of the fact of "laying down" the web-sites of governmental institutions…». At the same time, there is nothing strange in this situation

– the citizens just did not believe the militia, as well as that their actions were aimed at copyright protection.

It should be mentioned, that according to the review [14] of the copyright protection approaches in the USA, Canada, Great Britain, FRG, France and European Union, in general, i.e. in the countries, where the copyright protection is implemented de facto, and not just imitated, the society is very critical about the ban (shutting down) of any sources of information, even through the court. Any shutting down of the information sources by the initiative of militia, without the active participation of courts, is out of question. At the same time, concerning Ukraine, the author commented [15] that under the mask of the campaign for the copyright protection, there is an attempt to achieve other purposes, in particular, to limit the freedom of Internet and other mass media.

Here we should mention the level of citizens' confidence in militia, which is less than 20 %. For instance [16], during one of the militia actions in Kharkiv region, the citizens took the members of the special subdivision "Griffon" in the masks, who arrived for investigative procedures, as raiders and tried to obstruct them, striking up a fight with the help of improvised means.

2. In summer 2012 the agrarians of Ukraine massively refused to resort to the governmental support of the agricultural sector, as a result of check terror [17], even the Prime-Minister of Ukraine was forced to admit the fact. «In the harsh economic conditions the government has found a possibility to allocate 300 million gryvnyas to compensate for the losses of agrarians, as a result of a loss of winter crops. But we received applications only for 26 mln grn», said M. Azarov. As was found out by the Prime-Minister, the allotment of subsidies was accompanied by massive inspections of fiscal bodies. «This brings into discredit all the system of governmental support!», expressed indignation the Head of the government.

In the other report M. Azarov acknowledged, that the implementation of the governmental program of granting the cheap mortgage is made complicated because of the Ukrainians' nonconfidence to the authorities [18]. «People continue to distrust the

government… That is why we should work really much to regenerate their credence to the promises of the government and authorities», said M. Azarov.

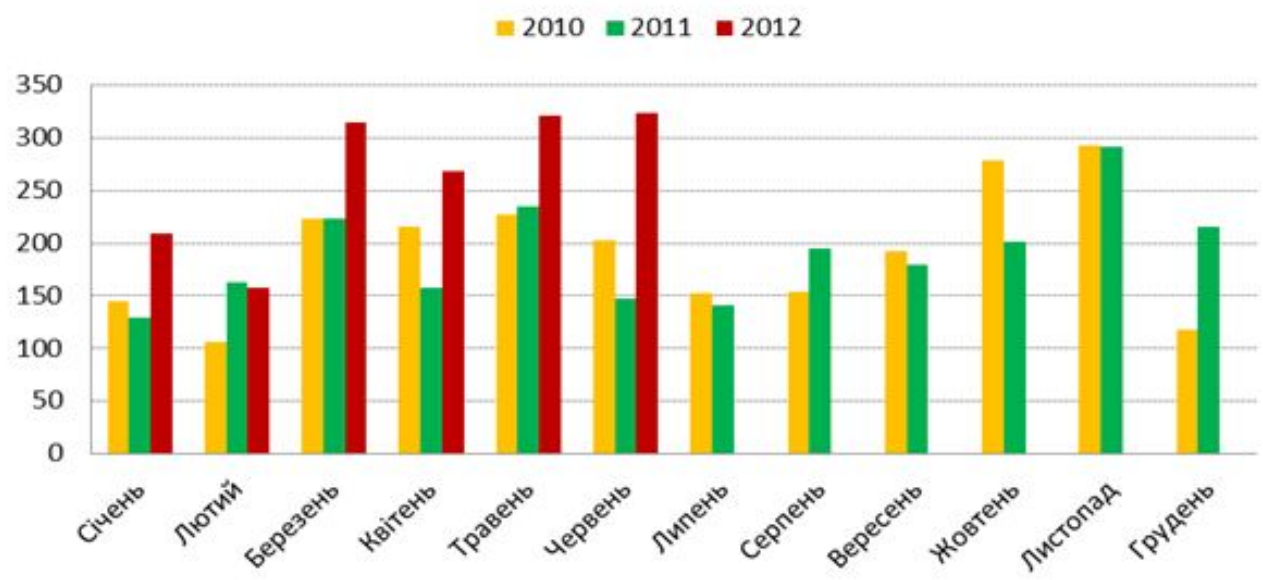
3. Discussing the problem of road traffic safety during the meeting with the Prime-Minister, dedicated to that very question, the expert O. Sytenko pointed out to one of the factors that increase the accident rate, namely, the incorrectly placed road signs. The main aim here, according to the expert, is only to encourage the corruptive earnings of the State Traffic Inspectors [19]. As a result, the drivers do not give credence to such signs; simultaneously they develop a habit not to believe to road signs at all, which can cause serious accidents.

4. The results of the survey about the reasons of the commencement of the prosecution, regarding the television and radio broadcasting company «Teleradiosvit» (TVi) chief executive officer, showed that only 9 % believed into the «taxing» version [20].

5. When speaking about the credence to the law enforcement system, it should be mentioned that, according to the national survey “The corruption in Ukraine”, accomplished by the Kyiv International institute of sociology, supported by the United States Agency of International Development (USAID), only 4 % of corruption victims confessed that they had tried to protect their rights in the face of the officials. The main reason is their confidence in futility of such attempts [21, p. 9; 22; p. 43]. In this regard 96 % of citizens show total nonconfidence to the law enforcement bodies.

6. The nonconfidence to the law enforcement system has also the other side – the nonconfidence of foreign competent bodies to the opinions of law enforcement bodies of Ukraine. In particular, the refusals of foreign judicial authorities on extradition of suspects to Ukraine are becoming systematic. Without discussing the soundness of the law enforcement bodies’ position at the present moment, we can ascertain the complete loss of trust from their foreign partners [23].

Thus, the state of credence to the Ukrainian authorities is extremely low, as a result of systematic violations, which indicates its gradual delegitimation. This is also confirmed by the increase of protesting sentiments in Ukraine [24] (see the chart below).



The number of protests yearly (monthly: left column – 2010, central column – 2011, right column – 2012) [24].

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Vorotilina T.V. ,Pershina E.A.

STRUCTURE OF CIVIL SOCIETY IN THE CONSTRUCTION OF THE INFORMATION SOCIETY

Vorotilina T.V., *PhD, Associate Professor of the Theory and History of State and Law of the North Caucasus Federal University, 355029, Stavropol, Kulakov Avenue, 2,*

Pershina E.A. , *PhD, Associate Professor of the Theory and History of State and Law of the Stavropol Institute of Cooperation, 355000, Stavropol, st. Gleneva, 36.*

Annotation

The state is the institute of the civil society which is on the way to transition to the information society. The civil society and the government – related elements.

Key words: civil society, mass media, government, information.

Despite the increased interest in the domestic legal doctrine to the concept of civil society in science has not developed a unified approach to the understanding of

the term, as well as to consider the subject composition, that is, members of civil society. There is also no legal (legislative) definition.

A.V. Malko defines civil society as a collection of non-state and non-political relations (economic, social, cultural, moral, spiritual, corporate family, and religious), forming a special sphere of the specific interests of free individuals-owners and their associations.

The author further points out that civil society expresses a certain type (status, the nature) of the company, its socio-economic, political and legal nature, development, completion. Civil society is not state-political, but mainly social, economic and personal, private sphere of human activity, really awkward relationship between them.

The state's role is reduced to the most necessary: the regulation of public relations, law enforcement, crime control, to create normal conditions for the unimpeded activity of individual and collective ownership, the implementation of their rights and freedoms.

Centralized power structures impact may persist, but not by the clerks and volitional techniques, and through tools such as taxes, benefits, credits, duties, tariffs, laws, subsidies, information, social institutions, political stability, the development of general guidelines and priorities, support basic industries, protectionism.

Speaking about the subject composition of civil society, A.S. Pigolkin emphasizes that it is formed of free and equal people. The involvement of civil society reflects political maturity of the person. The author repeatedly emphasizes that civil society - the sphere of free initiative of individuals, organizations and citizens' associations, which are independent in their activities of the bodies and institutions of the state, in building relationships within civil society participation of the state and its apparatus is not required. State intervention is not required due to the fact that the interests of civil society actors are beyond the direct activity of the state.

A.B. Vengerov defines civil society as an abstract and idealized collective entity, but as the actual state of society at a particular time in a particular country on the road toward a market economy and a liberal democratic regime.

Scientists believe that the rule of law should be independent, but legally regulated, and the fourth power - the power of the media, which promotes openness and transparency in the activities of public authorities. The question of the authoritativeness of the media is very debatable, in our view, however, we cannot agree with A.B. Vengerov that exist and develop civil society can only function of implementing the rule of law a comprehensive information service independent media.

Civil society is the open society in terms of access to a broad and diverse information. It is hard to imagine any of his field without information relations. These relationships are now able to develop as citizens to communicate directly with each other, and through non-print media, Internet, TV, radio. Media offers a significant influence on the legal consciousness of citizens. An important role of the media in promoting legal awareness is withdrawn printed legal advocacy, one side of which is the production of legal literature (scientific, popular, comments the current legislation). In a sense, social media is the bearer of justice and a mean of introducing it to a personal sense of justice. Media is acting as one of the ideal spiritual components of the social environment, individual sense of justice relates to social existence, and this relationship is mediated.

Media as a purposeful process of information transfer is a necessary condition for the formation of the individual and civil society, as are the major means of basic democratic ideas and principles of learning law society.
From media person receives from the state and society much of the information needed to cognitive material that he needed for the development of a citizen, civil society development.

A number of scholars have noted that the inclusion of media in civil society traditionally. However, N.I. Matuzov believes that one of its main elements is not any, and independent media, and V.S. Mokry includes these elements in the state media.

It is necessary to emphasize that the media as an institution of civil society is the most effective means of control over the government.

At present, the fully owned subsidiary of the state during the Soviet era sphere of ideological influence the media have become the media industry and is a key tool of the political system of the country. Today electronic media is one of the most important sectors of the economy and politics.

Currently, in our country there is no consensus on the mechanism of regulation of the right to information. Regulations on the use of information resources are reflected in the Federal Law N 149-FL "On Information, Information Technologies and Protection of Information." This legal document is a "technological" in nature, regulates relations arising in the formation and use of information resources, the creation and use of information technology, information security, etc. Rules and regulations, governing the right to information, scattered in various regulations and fragments regulate the relevant relationship, and some have become obsolete.

This situation, according to several authors, has led to the fact that "censorship moved from the sphere of control over the content of information in the media to the control of the information provided by the media." Being available to journalists was regulated. Modern democracy, according to Russian lawyers, is impossible without freedom of the press, which is its essential element. Imperfection of domestic legislation in the field of media can lead to situations where officers can hide objective information without violating the rules. It has been argued that "many of the structures encountered in the press centers, a public relations and other similar units were not mediate the relationship of the authorities and the media, as a barrier to such communications, organizational structure, designed to dose, strain, and sometimes distort information, even a kind of censorship. " Information often becomes a tool to manipulate public opinion and the mood of the state, which is particularly acute, we have seen in the course of election campaigns.

Would like to note that the process of information democracy in our country is in its infancy, and there is still much to be done to meet the international standards. Although legally defined authority limits of free speech, resolved to establish an independent media for its expression, but it stopped on these. There are no real mechanisms to respond to the problem, the voice of free media. In Russia, where the

process of the formation of civil society and the state legal system, the problem of the media and the legal regulation of their activity is particularly acute.

Analysis of the provisions of the Constitution gives reason to conclude that they comply with international standards set by international law. The Russian Constitution defined the fundamentals of the media, and more specific issues should be specific and industry legislation.

As you know, the Federal Law "On mass media" was passed in December 1991.

The basis of the law is the democratic principle of freedom of the media. It was enshrined freedom to seek, receive, production and distribution of information, as well as the establishment media. Confirmed the prohibition of censorship, but prohibited and abuse of media freedom. To the prohibitions contained in the Constitution is added: the use of media in order to commit crimes, for divulging state secrets, promoting war, as well as pornography, violence and cruelty (v. 4). It should be emphasized that an important form of interaction between the state and the media is a reaction to the government concerning their critical materials. Enough to recall the President's Decree of June 6, 1996 "On measures to strengthen discipline in the public service." The decree, which ordered the heads of federal executive bodies and heads of executive authorities of the Federation considered critical media materials and to report on actions taken. The practice in this area can hardly be considered satisfactory.

In accordance with the Federal Law of January 13, 1995 N 7-FL (as amended on May 12, 2009), "On the order of coverage of public authorities in the state media," the state media must promptly and adequately inform the public about the activities of the State. We must admit that this law actually does not work because they do not take appropriate regulations.

In connection with the new approaches to understanding the nature and structure of the civil society views on the changing role of the state in its relations with its independent institutions such as the media, social groups, and others.

In particular, A.K. Zharov in the structure of modern Russian civil society consists of five major systems: social, economic, political, spiritual, cultural and

informational. In this case, the author includes the political state, and notes that at present, in connection with the construction of the information society, e-government, the tendency of the changing nature of information interaction of society and the state, as expressed in the empowerment of citizens by providing instant access to various information, increasing the possibility of people to participate in political decision-making and to monitor the actions of public authorities of local government, and to obtain government services electronically.

Thus, we should not talk about the opposition of the government and civil society, and the interaction of these institutions of the political system. In the information society the task of Russian civil society and its institutions is to increase information literacy, to create the necessary mechanisms to better take into account the views of citizens and in the functioning of the public authorities.

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Nykytenko O. V., Shirkova I. V.

TRAFFICKING IN HUMAN BEINGS – THE SLAVERY OF OUR TIMES

Donetsk national university of economics and trade
named after Mukhaylo Tugan-Baranovsky

The article indentifies the nature of the trafficking in human beings, which subsumes all forms of nonconsensual exploitation. There is shown the necessity of combating THB from the governmental and social point of view.

Key words: exploitation, slavery, forced labour, servitude, criminals, removal of organs, victims, illegal migration.

Trafficking in human beings is a severe crime that has individual characteristics, but in most cases there is a common scheme: people are recruited or abducted in their country, transferred through transit areas and then exploited in the destination country. In the case of internal trafficking, all three stages occur within the borders of a single country. Virtually every country in the world is used by profit-seeking criminals for smuggling migrants-either as a country of origin, a transit country or a country of destination (or a combination thereof). Trafficking is often only one of the crimes committed against trafficked persons. Other crimes may be committed to ensure the compliance of victims, maintain control, protect trafficking operations or maximize profits [1; 2 p.].

Victims are often recruited, transported or harbored by force, by the threat or other forms of coercion or fraud in abusive conditions for the purpose of exploitation. The ways in which such power is established then maintained, together result in serious violations of the physical and mental integrity of the victims (thousands of

people have suffocated in containers, perished in deserts or drowned at sea while being smuggled to another country) [4; 174 p.].

Exploitation includes following offences: slavery, involuntary servitude, forced prostitution, forced pregnancy, forced abortion, torture, cruel, inhuman or degrading treatment, rape or sexual assault, bodily injury, unlawful confinement, withholding of identity papers, removal of organs, murder, unlawful threats, extortion, false imprisonment, kidnapping, illegal procurement, corruption, debt bondage, document theft and destruction of documents. Further, the forms of exploitation differ, although for several years the focus has been on sexual exploitation rather than on forced labour and other forms of exploitation [7; 2 p.].

Traffickers recruit their victims mostly in deprived, disadvantaged or poorly integrated sectors of society, offering them employment abroad. Many victims are lured with bogus offers of legitimate employment. Others agree on the type of work they are expected to perform, but are deceived by the actual circumstances they find on arrival in the destination country. Meanwhile some victims do not even realize that they are being exploited. This is particularly the case for victims who have worked under more exploitative conditions in sectors such as agriculture or textile manufacture in their countries of origin [9; 10 p.].

The number of people globally trafficked across international borders is between 600,000 and 800,000 per year. Among those who are identified, adult women are most frequently reported to be trafficked, followed by children [8; 7 p.].

Trafficking in persons is – like all migration – the result of interlinked push and pull factors and is mainly related to the market economy law of supply and demand. But among the push and pull factors are poverty, lack of education, of employment, of opportunities in countries of origin and many of these can only be addressed within a human rights framework – the respect of international commitments to basic economic and social human rights.

Push factors that enable trafficking from a given country are: government corruption, high infant mortality, very young population, low food production, conflict and social unrest. Push factors concern living conditions, but also the person

of the potential victim. Living conditions are largely determined by the economic situation and perspectives in the country of origin of the victim, such as an unequal distribution of wealth, unequal opportunities on the labour market, and geographical or political circumstances.

Employers and migrants are willing to pay increasingly higher prices to meet each other in an internationalized labour market. Increased migration control and restrictions contribute to making trafficking and smuggling of migrant labour very profitable for criminal intermediaries. In agriculture, food processing, construction, domestic help, labour-intensive manufacturing, home health care, and other sectors that often involve dirty, dangerous and degrading jobs, the demand for cheap, low-skilled labour acts as pull factor. Push factors in countries of origin include decline of traditional industry, loss of agricultural competitiveness, elimination of jobs and subsidies by structural adjustment [4; 100-101 p.].

Three key clusters of factors can be identified:

- socio-cultural factors such as the social acceptability of putting children to work, traditions of migrations that are centuries old in Africa, illiteracy or low education levels,
- economic factors such as the imbalance between rural and urban wealth levels and a desire to escape poverty,
- juridical and political factors such as absence of legislation and the ignorance of parents and trafficked persons of their rights under the law, or mistrust of the law and open borders [6; 85p.].

At a global level, the largest numbers of reported references are to nationals of Asia and it is followed by Central and South Eastern Europe. Africa is predominantly an origin region for victims of trafficking. Western Europe and Western Africa are reported to be the main destination (sub-) regions for African victims. At a country level, Nigeria, Benin, Ghana and Morocco rank high as origin countries [2; 85-87 p.].

Asia is mainly an origin region as well as a destination for trafficking in persons. At a country level, China and Thailand are both ranked very high as origin countries.

As destination countries, Thailand, Japan, Israel and Turkey rank very high. So, Thailand ranks very high as an origin, transit and destination country [2; 88-90 p.].

Central and South Eastern Europe is reported as predominantly an origin sub-region. Victims trafficked out of this sub-region are reported to be exploited in Western Europe. A number of sources also refer to countries in Central and South Eastern Europe as a destination for victims from the sub-region, indicating that intra-regional human trafficking is a problem [2; 90-94 p.].

The region, Latin America and the Caribbean, is primarily reported as an origin region. Most of the sources report Western Europe as the destination for victims trafficked out of this region, while a great number of sources report the region itself as the destination. The United States ranks very high as a destination country; Canada is ranked high too. Oceania is primarily reported as a destination region, with the focus on the sub-region of Australia and New Zealand [2; 96-100 p.].

The legal aspect of trafficking is crucial, whether from a human rights angle or that of criminal prosecution. Trafficking can be linked to organized criminal and law enforcement activities or can be viewed from the perspective of the victim, predominantly as a violation of human rights. These two perspectives are not mutually exclusive but rather inherently linked [4; 13 p.].

Today on the international level human trafficking issue is regulated mostly by the Trafficking Protocol, that was adopted in 2000 the in order to prevent, suppress and punish Trafficking in Persons supplementing the United Nations Convention against Organized Crime (UNTOC). The Trafficking Protocol is based on what is occasionally referred to as the 4 Ps: Prevention, Protection, Prosecution, and Policy. The Protocol entered into force on the 25th of December 2003. At the same time the Protocol against the Smuggling of Migrants by Land, Air and Sea (Smuggling Protocol) was adopted. The Convention and the Protocols were negotiated at a series of eleven meetings of a special intergovernmental Ad-hoc Committee under the auspices of the UN Crime Commission, which were held in Vienna; more than 100 countries took part.

Current policy for counteracting human trafficking falls into three categories:

- prevention and deterrence,
- law enforcement and prosecution of traffickers,
- protection of trafficked persons, 'rehabilitation' and assistance in social reintegration. However, these official actions unfortunately face many problems such as fragmented evidence, judicial disharmony within and between national legislative systems, weak social institutions with logistic problems and inadequate professional capability to lend support to trafficked persons [4; 125 p.].

The lack of specific legislation against trafficking in persons is arguably one of the most serious obstacles in countering the crime. In the absence of legislation, it is very difficult to punish human trafficking and bring the traffickers to justice.

To decide the problems related to human trafficking we should to:

- analyze the factors that generate demand for exploitative services and take strong legislative, policy and other measures to address these issues;
- develop programs that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups;
- ensure that potential migrants, especially women, are properly informed about the risks of migration (e.g. exploitation, debt bondage, and health and security issues, including exposure to HIV), as well as the avenues available for legal, non-exploitative migration;
- strengthen cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication;
- develop information campaigns for the general public to promote awareness of the dangers associated with trafficking. Such campaigns should be informed by an understanding of the reasons why individuals may make potentially dangerous migration decisions [6; 58 p.].

In the context of preventing trafficking, the need to balance border control with freedom of movement – and to do so in a non-discriminatory way – is extremely important. One more positive step that government could therefore take to combat

the illicit flow of people would be to allow for regulated movements of labour migration.

Conclusions. Being a multi-causal problem, human trafficking cannot be addressed by one practice. Likewise no single organization is capable of solving all affiliated problems, nor should it enforce one vision of the problem as global. A combination of practices capable of creating policies in combating human trafficking is sorely needed. Finding best practices to counter human trafficking begins with the recognition that such practices are elements in a broader process of social transformation.

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D. Bakaiev

Legal-theoretical Approaches of Abuse of Civil Rights Conception

Security Service of Ukraine, Kyiv city

The theoretical approaches to the civil rights abuse conception are being researched in this article. The abuse of the right by the participant of legal relations is analyzed by the author of the article. Problems and prospects of the conception's further development are determined.

Keywords: the abuse of the right, objective right, equitable right, limits of realization of right.

Introduction. The problem of act's qualification as the abuse of the right is extraordinarily difficult. Hardships arise because the concept "abuse of the right" is evaluated in most cases. This is the absence of possibility of law enforcement official to find the clearly certain signs of abuse of right in legislation [1, p.420-425].

At the same time, the practical issue work out is impossible without a clear definition of "abuse of right" in civil law. Especially it relates to the spheres, where a current legislation associates a realizable abuse of the right with the necessity of the offensive and unfavorable consequences for a subject of law (for example, refuse in defense of equitable right in case of abuse of civil laws; privation of paternal rights; mass media intermission in case of mass information freedom abuse;

The problems of abuse of right' qualification and its legal consequences have been researched by such prominent scientists as M. Agarkov, M. Baru, S. Bratus', V. Gribanov, N. Malein, I. Pokrovsky, V. Riasentsev, Y. Sukhanov, A. Yudin, T. Poliansky and others.

Thus it should be noted that this matter has recently become of keen interest. This is not only because of the inclusion of the Article XIII to the Civil Cod of

Ukraine (esp. part 3) but also with the mutual understanding of the concept “abuse of right” [2].

T. Poliansky stresses in his writings, that the abuse of the right is the use of objective (positive) right norms (because of their inadequate interpretation) to harm the public relations; thus, a certain equitable legal right becomes an instrument [3, p.16].

His understanding of abuse of right and his approach to the research of this phenomenon differs from A. Malinovsky’s. That is the basis of Poliansky’s research is the abuse of “objective (positive) right” and basis of A. Malinovsky’s research is the abuse of “equitable rights” [4, p.8].

K. Sokolovsky is of opinion that the abuse of the right does not have any general description and becomes actual as a result of judicial decision in the acceptance of that a leading role is spared to judge discretion [5, p.45]. Commenting this position A. Malinovsky marks the argumentativeness of the offered understanding of abuse of right phenomenon. The idea that “the abuse of the right does not have general determination”, can hardly be considered as reasonable. [6, p.43].

The legal doctrine and partly the legislation contain the signs of the abuse of the subjective right. They allow to distinguish it from other contiguous legal concepts and similar legal categories. The judicial practice also determines such signs.

What is different about it is that the signs that allow to characterize particular acts as abuse of right are set forth by legal science and marked by legislator through evaluation concepts (such as certain equitable right setting, orientation of intention to harm, cleverness and honesty of an authorized person, morality of person’s legally meaningful actions).

It’s obvious, that such situation determines the necessity of judge’s discretion. In this aspect it’s reasonable to accept K. Sklovsky’s idea that only a judge can come to the conclusion if the fact of equitable right abuse in every specific case took place, after the detailed analysis of actual circumstances and their comparing to the corresponding legal norms.

However, V. Yemelianov thinks that the realization of such approach in practice would cause substantial harm to the stability of right, because the participants of legal relations would not be confident that their actions are legitimate.

In fact a court is not limited by any rules which could point out the signs of the abuse of civil rights and would have the right to classify any action concerning another person's interest as an abuse [7, p.35].

At the same time, to come to certain legal improvement notice it is necessary to define the term "abuse of right", in civil law in particular.

M. Ibragimova suggests to determine the abuse of right as "The abuse of equitable civil right is an independent type of legal behavior exercised by the authorized subject of civil legal relations, that conflicts with legal principles of civil law" [8, p.155].

Thus, M. Ibragimova states that the abuse of right, on the one hand, becomes the special legal behavior, and on the other hand, it conflicts with the first position, where the principles of civil law are violated, id legal norms of general character.

V. Yemelianov offers another approach and determines the category of "abuse of right" with the help of the basic civil theory of honesty and cleverness of civil legal relationships' participants: "A person is conscientious if he acts without intention to cause harm to others, and also excludes irresponsibility (self-confidence) and negligence as for a hypothetic injury".

The investigated signs, facilities, forms and types of abuses make a legislator think of the necessity of current legislation perfection. They also demand the legal culture improvement of civil laws and duties' performers, as the more the legislation (norms of law) improves itself, the more this process is ineffective if the transformation of values of right doesn't take place in legal relations, that is moral improvement of legal practice of society. Thus, legal norms must correspond the basic values of culture, moreover, they have to assist its strengthening and development.

Coming from the analysis of theoretical positions, current practice, Article XIII of CC of Ukraine and its enforcement the conclusions can be done: [1]:

1. The legal value of norms about impermissibility of abuse of rights in a civil legislation needs improvement. That is why the external sign of scrupulous law enforcement (principle of impermissibility of abuse of right) is the only prohibition of chicanery contained in the Article XIII of CC of Ukraine.

2. The principle of impermissibility of abuse of rights does not have his own proof, logically irreproachable theoretical construction that suits most of civilists.

3. As a result of absence of theoretical base of application of the Article XIII in practice considers its norms usage chaotic and pointless. If the signs of abuse of right appear in a case, the courts can not clearly characterize these relations.

4. The norms on the abuse of right (the Article XIII of CC of Ukraine) at consolidation with another ways of defense are used by a court and interested persons only as an auxiliary plan, and the rejection to defense the right because of high vagueness is often ignored.

5. The rule of prohibition of the abuse of rights by persons who often apply legal norms equals to the special norms, for example, with the special norms of competitive legislation. These specific modes “grew” from the Article XIII of CC of Ukraine and found the special, their own article of adjustment, that is why in most cases, to our opinion, there’s no need to apply the Article XIII of CC of Ukraine in parallel or together with the norms of specific legislation.

6. The abuse of civil rights according too its terminological similarity is often by mistake equated with the exceeding of the official powers of persons (organs) of legal entity.

7. The reference to the Article XIII of CC of Ukraine in practical law enforcement more often becomes the comfortable founding for blocking, with the aim of abuse, the juristic act of legal equitable civil right or it is used to draw aside a decision-making, to complicate its implementation, to predispose to the amicable agreement, to return money instead of commodity, to create heavy circumstances to the contractor.

In civil legal relations de facto there is an extremely high latent constituent of actions, that has signs of abuse to which the positions of the Article XIII must be

used, but courts(or parties) apply only the unfolded interpretation of similar norms of right.

Conclusions. Thus, taking into the consideration the forgoing it is worth mentioning that the high degree of vagueness of norms of the Article XIII of CC of Ukraine and the absence of a clear theoretical construction and clear doctrine determination of this legal phenomenon, as abuse of right, prevents creation of rights' protection effective mechanism and legal interests of legal relations participants. Thus, the problems of development of theory of abuse of right become the problems of legislator and law enforcement official.

The given arguments raise a question about the necessity of perfection of points of the Article XIII of CC of Ukraine.

Thus, a future norm about prohibition on abuse of right must:

1) take into account the principle of legal equality in the civil law;

2) not identify an equitable civil right as means of abuse;

3) not determine definitions;

4) comprise the right and duties, actions and inactivity of any persons;

5) foreseen the possibility of temporal limitation of civil law both on initiative of parties and on the initiative of court, in particular in co-operation with other approvals.

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Ivanov A.M., Dr. of Law, Senior Lecturer of Chair
of Theory & History of State and Law,
Law School of the Far East Federal University,
Russia, Vladivostok
Korchagin A.G., Dr. of Law, Professor of Chair
of Civil & Business Law,
Law School of FEFU, Russia, Vladivostok

THE MODERN LAW AND LEGAL MODERNIZATION IN RUSSIA AND CREATION OF COMPETITIVE MEDIUM IN THE SOCIETY

1. Modern Law. The problems of definition of law have been traditionally concerned and are still concerned as belonging to the number of the most important in the Russian and foreign legal literature. During many of centuries has been formed and is still being formed a normative definition of law. Similar definitions of law, with the stress on the attention of researcher mainly on the norm of law or on the totality of norms, besides the other definitions “have been preserved in a somewhat changed ‘modernized’ kind till now”. [1] L.S. Yavich had given a wider definition of “law” according to character of existing legal relations (“legal norm in action”),

underlining “multi-aspect approach” to the law – this is his acceptance not only statically, but mainly in dynamics as functioning law. [2] There were also attempts to synthesize the Positive and Natural law. And such kind discussions were spread not only in Russia but abroad as well. In our opinion, the law is a polyphonic phenomenon, which exists in different kinds and forms. But at the same time the law is an inner symphonic phenomenon. The law is a multi-aspect phenomenon and the end of the 20th century has actualized the task of theoretical interpretation of an integral conception of law, which might unite the life ideas of main legal schools and directions. The meaning of the law is quite multifaceted, and thus the law cannot be brought to the established norms only, because of legal norms, differing from legislation, appear and exist within legal consciousness, or sense of justice, as norms of relations or, in other words, as normative legal relations, defining the behavior of social objects. [3] Today, the importance of understanding of Natural law exactly as ideal basis of juridical norms is stressed, where the norms being the fruits of human intellect do not exist self-standing, but are produced from that basis. The understanding of Natural law as a kind of code of “ideal norms”, existing self-standing and parallel to the Positive law and “competitive” with it, is definitely unacceptable. [4] Legal relation from the point of view of Natural law is supposed to be like social interactivity appearing in a sort of special form, the participants of which own reciprocal corresponding rights and duties, realize them with the purpose to satisfy their needs and interests in a special order, not forbidden by the state. [5] The principle of the Rule of Law concerning the global relations means the following: because the law in its basis is in itself a system of Human rights, then the principle of the Rule of Law is the principle of priority of human rights, which should be followed by the modern democratic state, in its law making and law enforcement activity. Concerning the inner state (national) law (the principle of) the Rule of Law appears to be as the Rule of the law of rights (i.e. of the law, which secures human rights).

Thesis about priority of human rights is being subject to doubt even in those cases, when it is going about inner national legal system. So, in spite of the fact that

this principle has got unambiguous fixation in the Constitution of Russian Federation, some of Russian legal scholars speak till now about that the priority of rights of a person seems to be a socially dangerous thesis, which provokes unrestrained egoism and individualism. Such an approach shows us not understanding of dialectics of personal and social welfare. Some more difficulties meets the spreading of the principle of human rights, made up in Western countries, onto the sphere of global relations. Here this principle is self-evident for the western European mentality. The forwarding of the ideology of human rights on the wave of global processes with the interpretation of human rights, as a universal social value, generates among the representatives of different civilizations a fear to lose their own cultural identity.

The essence of classical liberalism is in the equity of global rights and freedoms. And the same principle of liberalization logically was brought into the sphere of intergovernmental relations. Taking into the account the fact that the states differ, that they may have different interests and preferences but the rights and freedoms of one state end there, where begin the rights and freedoms of another state, the followers of "aggressive liberalization" often add or take as unimportant the fundamental principle of " limitation of my own freedom by the freedom of others", and not rarely confuse the freedom with all permissiveness (this tendency is quite definite expressed in the USA and some Western European countries). But the freedom for self-expression, if it is really a freedom, and not simply lawlessness, is possible only in legal forms, which do not allow doing damage to other persons, what would mean the offending of their rights.

And further, if globalization should be understood as a process of interactivity of earlier dissociated fragments of stratum and acquisition of integrity of civilization, then law as one of socio-normative systems also should be concerned from the viewpoint of interactivity and approaching of national legal systems and subsequent standardization and unification of international law. This process can be regarded as globalization of law. [6] The suggestion to reject the state's sovereignty is accepted as being equal to rejection of territorial integrity of a state. To our mind, no global interests can lead to rejection of supremacy of state power on its own territory. The

state sovereignty – is not an archaism of previous epochs, but an actual juridical and political category of the present time. To sum up, the international commonwealth has no right to override the limits of state's sovereignty. Only the state itself can voluntarily assume a liability or obligations of some kind, and this follows from the sovereign right of a state as a member of international commonwealth. [7]

The concept of globalization is wider than that of integration. Integration means approaching of political, economical, legal, spiritual and cultural systems of some countries in the process of traditional international cooperation. Globalization means across-the-broad process of interactivity nearly of all the states of the world. Though the point is not only in the dimension, but in the quality, forms, and content of such interactivity, as well. It seems that globalization has a high rate and depth of interpenetration of norms, ideas, rules of cooperation of states, introduction of concrete standards of communication. The cooperative efforts of states should change their political competitiveness and mitigate the problem of National security. Through the participation in the intergovernmental institutes a state stands up for its interests and makes influence on defining of rules and norms, not contradicting to the local interests.

The future belongs to the development of new forms of legal regulation: these are laws-programs, acts-doctrines, recommendation-prognosis, framework laws, model acts. [8] All these acts are now getting a significant spreading, but under all conditions it is hard to name them "new forms of law", because they do not correspond to the main requirements of the law. [9] Some authors predict, within the framework of the world globalized system, of creation juridical mechanisms to minimize the results of neo-liberal globalization (e.g. new order, I.I. Lukashuk). Some other prefer to establish geo-economical responsibility for geo-economical crimes, when states-victims damaged by involuntary financial competition could raise the question about damage compensation, as well as to accept a Code of international economic order (E.G. Kochetov). In fact, the European law has a lot of specific features, being quite a specific legal system, the norms of which can be placed neither in the international law, nor in the national law. The modern

international law, since the last two decades, from traditional means of peaceful regulation of conflicts between the states more and more turns to the means of justification of force usage by the repressive organs of global government and plays the role of ideological ruling, and thus plays the role of ideological institute, which substantiates legitimacy of use of violation in the international relations. [10]

Thus, to sum up, the fullest symphony of the principle of the rule of law under conditions of crisis of modern international law with the safety requirements presupposes the following:

1) Formation of proper normative (based on law) and institutional (based on legal democracy) basis of global political and legal space.

2) Preservation of the principle of national sovereignty on the basis of a new legal concept of sovereignty.

It appears that the modern law exists in space of two measurements: one could be named “normative descriptive”, the other – “normative constituent”. If the first legal measurement is conditioned by those actual structures and processes, which have been formed or are being formed, then the other is conditioned by the new social practices and possibilities. However, there still remains the question, in what direction the law has to be changed? The law can be developed in order to support new social transnational institutions, but it is not clear, to what will it contribute, and will this step not deepen global crisis. The law can be more oriented to the person, but the latter is already up to the limit egocentric and irresponsible.

What is it going here about? Is the law powerless? If the law appeared as an outer regulator, reinforcing itself by coercion and force, then could the person in our time become up to the limit egocentric and irresponsible? This problem is not new for our time. Quite for about a hundred years ago, in the very beginning of 20th century, a famous crime researcher, Henry M. Boies, seeking the effective methods of positive influence on criminals, in the foreword of his work on Penology wrote such words: “The more familiar one becomes with the details of the attempts of the society to secure protection from criminals, from early times to the present, the more profoundly he is likely to be impressed with their inordinate cost and their inutility.

Notwithstanding our tremendous expenditure of effort and money, crime continues undiminished, and popular apprehension unrelieved. The laws do not protect." [11] And as a calling through the 20th century we hear till now: "When a great social grievance exists, it becomes everyone's duty to endeavor to discover its cause and cure. This responsibility has been very generally recognized." Before that time, and since his words were issued, a lot of books, scientific studies have been published which have so expanded our knowledge that it appears possible to propose a complete solution of the problem. Yet the problem takes its greater dimension.

One could think, why then at present time, since more than one hundred years, the scholars continue their studies, seek for the most effective influence on the criminals, and develop new and new laws? For sure, the pessimism, which ruined Boies, at our days has obviously much more grounds. Does it mean then, that we should stop the experience of crime studies and of methods of influence on it? We think, just on the contrary. The studies should take more covering scale, because at the present time we observe more and more integration of countries during the process of globalization. Interpenetration of legal systems has its noticeable advantages, though not without some lacks. But the hope for that the study of a positive experience of influence on the crime will give its positive results, also grows up. Why? Because of the culture takes unifying character. Following the tendencies in mass media, we can be convinced, that consumer needs are almost all already leveled. Similar tendency is noticed in the condition of spiritual needs. Thus, the influence is supposed to be more and more unified.

In the recent time very often when speaking about the international process of democratization, the key link of which is the problem of Human and Citizen's rights, the term "universal values" is used. Say, just the availability of "universal values" dictates that or another behavior of governments of different countries, including Russian Federation. Moreover, such a behavior of the government had been even legally established in the article 15 of the Main Law of RF (Constitution) of 1993, where it says about the priority of international norms (i.e. "universal values") before

the national norms. Let us record for ourselves this premise: by this, it is declared that the "common" ("international") prevails comparing to the "private" ("national").

2. An Approach to Legal Philosophical Problems of Constitutional Security of Human Rights in Russia

So, continuing our thought, in other words, it openly goes about the priority of "majority" in relation to "minority". Here is obvious the activity of elementary logic, which does not take into account "drop of tears of one child"… They did not remember about this "drop of tears" even then, when they had bombed Serbia or Iraq. About that "drop of tears" they do remember very selectively when law interpreting. However, one of the tasks of the law is protection of the "weak" from the lawlessness or tyranny of the "strong". The law in this case performs its "compensatory" function, which acts so as if it "levels" or "evens out" what was created "unequal". Such function (compensatory or equalizing), in its turn, is necessary when the level of morality in the society falls down. Because it is expected, that when the level of morality is high enough, then the "strong" or the majority will not dare to violate the rights or interests of the "weak" or the minority. The contrary is also equal, the weak will not misuse of the legal mechanism, granted him only for the case of protection of offended rights and interests. But according to decrease of the level of morality, there can occur situations, when a harder "compensator" or restoration of violated interest are in need, and the role of that has to play the law as a totality of juridical norms. [12]

As long as the law itself, to be assumed, should be a "universal value", because its norms in democratic countries are accepted in the name of the people, i.e. of the whole society, it is naturally that, like morality, the law will act in the most proper way there, where there already exist for all some "common" values, shared, to that or another degree, by all. Because in such case the rules of norms are performed by the citizens voluntarily. On the other hand, there, where there are no such "common" values, the conflict between participants of social relations becomes unavoidable. Because the "law is a minimum of morality", the latter, obviously, forms some kind of a rod, the basis of the first. [13] Therefore, without any basis or foundation

(morality) the building of the law cannot stay. But due to the fact that morality is directly connected with the worldview or perception of the world, the relation of different people and individuals to one and the same norm (including juridical) might be varied. In other words: the difference in the worldview puts an imprint on the sense of justice, causing difference also in it.

Just because of that, in spite of similarity of appearance of formulation of the principles of social relations, due to the internal substantial difference it was impossible, till now, to develop the principles of interrelations in the field of Human rights and Citizen's rights which could be accepted by all. [14] Especially sharp the differences can be seen in the social values by the religious and unreligious or atheistic people. Describing this difference, I.A.Ilyin, for instance indicates: "Christianity appeals to the heart; it seeks for the love to the Lord and to each other. Bolshevism (= atheism) propagates the hate. The hate or hotility of classes – is the fundamental principle of Marxism and communism". [15] "The Christians love is hated and rejected by the communists as treason against the class interests". "A communist has to be merciless towards the "class enemy", he has to eradicate him (Lenin). [16] Bolshevism (= atheism) knows only one goal in the life – conquering of the world by the help of world's revolution. Therefore it attracts to itself all kinds of adventurers, careerists, and swindlers from all round the world, who do not care about… justice, but only run after enjoyment and power". [17]

"The Spirit of Christianity condemns and rejects evil means, disregarding the "good aims" of them for the first view as it may seem. Imaginary service for an aim does not turn evil means into the good ones. For the communists (atheists) "all means are good" - lie, deception, cunning, violation, capital punishment – only if they contribute to the revolution. "The supreme law is the benefit for the revolution; we should not reject any means" (Lenin, Yaroslavski). If for the victory of certain class is necessary to destroy tens millions of people, as it has done the last war, then it must be done, and may be done". (Yaroslavski) [18]

"Thus, the Christianity relates to bolshevism (= atheism) as the love towards hatred,… as service towards lawlessness…". [19]

We intentionally took for the example two worldviews, which openly contradict to each other. In fact, the contradictions between Christianity and atheism, between Christian values and atheistic ones are so critical, incompatible, that only very surface view can try to establish some "similarity" and just external, and even the external groundless, because the acquaintance with the internal content at once puts all on their places.

The modern European and American culture in its basis is Christian culture. Accordingly, those international legal documents, which were developed and accepted in the middle of 20th century had under them "common values" (naturally, common – for the Europe). Democracy declares about "pluralism" of ideas (= value orientations), striking through the generality (universality) of values, thus, to speak about "universal (common for all human beings)" in "pluralism" is simply improperly, impolitely. In addition, the aspiration of the Europe for creating of "post-Christian" space shows, in our opinion, the will to distance themselves from Christian values, but this is possible only under one condition: accepting and confessing of anti-Christian values.

The legal ideal represents the existing and dominating in each society (but with different values and estimations) subjective views about the good, justice, freedom and honesty, as the most prevailing psychological relations, coming as commonly obligatory rules of person's behavior, what reflects in the sense of justice. Such relations become objective in the prevailing sense of justice, quintessence of which becomes legal doctrine. Yes, it is a similar common aspiration, but they do not speak about that in each society they understand these words according to their worldview, i.e. according to the shared at the given time values, which, in their turn, are directly connected with confession.

It is obviously, that in such a situation the realization of Human rights will be hindered and will leave much to be desired, because to reach the common denominator will be impossible. Or this denominator in fact will be out of itself a simple totality of all differences. In other words, liberal democracy, this 'forewoman' of the Constitution of RF (1993), in striving for security to each their human rights,

among which there is also the liberty of conscience, i.e. the right to choose one's worldview, had established declaration about political and ideological pluralism, what, to the greatest extent, means the possible availability of different opinions in a number – equal to the number of citizens within the country. Or else: "As many heads, so many brains". We suppose that the folk's wisdom says not in vain, that "You cannot please all". Thus, either we have to regard the folk's wisdom as unfounded, or to recognize, that unfounded are the norms of Constitution about ideological and political pluralism when simultaneously prohibiting of any integral ideology. It seems that the security of Human and Citizen's rights would not be offended, if in declaration about pluralism of opinions an integral ideology would not be denied, but, on the contrary, would become firmly established, in particularly – traditional ideology of state-forming nation. Then the conscience of the governors of Russia would be more comforted, without the split of consciousness, which occurs from the declaration of ruling party named "United", without any attempt to change the Constitution's norms about prohibition of that very unity (!), i.e. generality, or community.

In some bigger work we shall try to develop this declared topic. But here we now complete our thought: Without generality of interests, without common values, when developing "naked pluralism", as end in itself of liberal democracy, it is a pity, the very idea of democracy is discredited, turning to laughingstock, becoming hindrance to creative initiative of masses, which is based on the help to the next. And this, in its turn, undermines the possibility to have real Human rights. This multi-complex problem has many facets. However, common coordinated efforts, we hope, can bring to bettering of legislation in force, but, the main thing, - of real policy within the country, - to improvement of life of the state-forming nation of Russia, thus, consequently – of all multi-national and multi-confessional Russian people.

The law in itself, by its occurrence already says, that in principle, there can be neither irresponsibility nor lawlessness. Why? Because even the ancient Roman jurists told: "Ignoratia non est argumentum" (Ignorance is not an argument) and we know that ignorance does not free us from responsibility. Thus, the law simply cannot

change its essence. Changed can be only the relation towards it. It can be fulfilled (then we speak about the following the law, law-abiding, law enforcement, execution of norms, coercion), or the law can be not fulfilled (then we speak about offence, violation of law), then it is a case for the action of a sanction, of the work of law enforcement organs. That is all. Thus, there is no need in changing the law in its essence, but there is a strong need in changing relations towards the essence. (Compare the action of laws of Nature. The law obviously should function for justice, but, what is likely to be just in the nearest future - the further development of our technologic civilization or, on the contrary, its critique and transformation in the direction of creation of new civilization, free from existing vices, abnormalities, defects and problems?

3. Modernization of Law. The modern legal system of Russian Federation has to the great extent features of Roman-German legal system and, in our opinion, is coming to the following: the normativist's understanding of law combines with the concept of Natural law and of Sociology, and from there we have a great desire to develop a notion of law by one definition. The legal aspect of modernization bears an integral character, and in this meaning modernization processes have close connection to legal policy. Looking for an optimum synthesis of social (moral) and individual (legal) principles, for Russia, has ever been in the center of attention of Russian legal-philosophic thought. Though the leading scholars of Russian philosophy sought for such synthesis within the limits of morality, the interpretation of law as enforcement mechanism of morality tends to danger of unlimited violation by the state, which always will self define (in) what this mechanism of moral perfection should consist of, because in practice every denial of legal principle of formal equality leads to abusing. (B.N. Chicherin). Either freedom in a legal form of equality, or abuse in 120 multi-faces manifestations. (V.S. Nersesyants). Therefore the analysis of personal and social sources, sought for in the Russian philosophy of law, should be found not in the field of morality, but within the limits of legal principle of formal equality, i.e. within framework of human-centric paradigm, based on the priority of human rights. [20] Though it is quite disputable, because of false

understanding of the essence of law. Only on such theoretical platform could go creation of European and Russian legal-philosophical traditions, which will be directed not to the limitation but to expansion, widening of human's freedom.

4. Modernization of Legal Policy. The basic directions of development should be looking for new effective means and technology of legal regulation of social relations on federal, regional and municipal levels. Similar conception should include three main elements: 1) reasoning of the aim of legal policy in the modernization conditions; 2) adequate means of legal policy; 3) measures, directed to reaching the aims of legal policy, concerning modernization of society. Under modernization conditions the legal policy in itself is divided into two self-standing, but interconnected directions: the policy "in the field of law", and the policy "by the means of law". It should be especially mentioned about traditional modernization of Criminal Code of Russian Federation. So, on the 7th of December 2011 the Federal Law №420-ФЗ had announced further new changes to the Criminal Code. This was not a single event for the criminal legislation, for the whole system of criminal justice (amendments were taken also to the Criminal Procedure Code and to Criminal Punishment Execution Code). And it goes even not about the quantity of articles, which suffered changes: they were in number up to 239. It goes about that the law, adopted in December of the last year, had, in fact, essentially changed the legal background for combating the crime.

The character of privatization in Russia was criminal in its nature, what the main ideologists of Russian reforms even do not hide. The study of the mood of Russian people reveals that the most part of Russians do not regard the assets obtained as a result of privatization as legitimate. Therefore there is a very high level of support to review the results of privatization (83% of interviewed people). [21] It is necessary to reach stability of court's practice in application of criminal legislation as new kind of administrative punishments, and secure their quantitative fulfillment. Criminal punishment should be hard enough, however not abusing the convict but stimulating him to re-socialization.

In some new way occurs modernization of Civil legislation. Previously the concept of development of Civil law was elaborated and on its basis was prepared the bill (of the law) No. 47538-6 “O vnesenii izmenenii v chast pervuyu, vtoruyu, tretyu i chetvyortuyu Grazhdanscogo kodeksa Rossiiskoi Federatsii, a takzhe v otdelniye zakonodatelniye akty Rossiiskoi Federatsii (About Amendments to the First, Second, Third and Fourth Part of Civil Code of Russian Federation, and in Addition to Different Acts of Russian Federation)”. The acceptance of this Bill by the parliament will actually lead to a new Civil Code of RF. By this, we draw the attention of the reader to the fact that the Civil Code of RF of 1994, is a typical product of reception of western law, as the case is with the Criminal Procedural Code of RF of 2001 as well – the content of which does not have historical roots in Russia. The modern Russian science on the whole regards the reception of law as voluntary process in deriving and implementation of legal values of foreign origin.

5. Juridical Hermeneutics as Law Understanding. “Hermeneutics” the term of Greek origin, doctrine of principles of legal interpretation (“to bring to understanding”). The main task of hermeneutics has been concerned as determination of the idea of Law-giver. Hermeneutics unites all the schools of law, stressing the role of law, sense of justice, and of concrete legal relation as of three necessary components of law understanding.

To our opinion, juridical hermeneutics deserves to be self-standing paradigm of legal thinking on the following situations: first, in the root of this conception is placed the protest against technocratic tendencies of modern political and juridical thinking; second, juridical hermeneutics goes out of socio-cultural factors in the life of law, what is highly actual today, when the threatens for the cultural pluralism become actual in the connection with the processes of expansion of western world; third, this paradigm permits without contradictions “put on” the juridical positivism and different in their foundations doctrines of Natural law; fourth, this legal relation has more “right” for being such due to the fact that it is a process of understanding of law “on the whole”; fifth, juridical hermeneutics – is namely just that very approach to

the law, which responds to ideological needs of law: to stop “corrosion” of social structure, which is damaged by the radical individualism.[22]

6. Philosophy of Law and the Theory of Normative Communication (some theoretical-legal and sociological aspects). Concerning the modern society and modern law we can say that today we are involved into the process of modernization of modern societies and their legal systems. V.Kravets regards all the law, i.e. lasting processes of production and reproduction of legal orders and legal norms, as well as their application to human emotions and deeds, as informational convergent social-legal phenomenon. The law in this case is understood as functional, all-interpenetrative socially established net of all dynamically functioning communications and juridical actions. Such net in its fullness forms the law. [23] Communication is an “atom” of sociality. The “social” does not exist at all, out of communication. Here it is important not the very “fact of interaction, but that every interaction is determined by subjective” possibilities to understand the meanings of given “objectively“ existing texts. Communication leads from the text through legitimization to action. It includes information and behavioral aspects as “basis” and “result” in its kind. Communication is not the facts-things, but processes-events. If the social represents through the texts as connected symbolic systems, then it means, from the very beginning, the availability of subjects, who are able to understand the meaning and value of such texts (to interpret them) and to interact on the basis of accepted information. The recognition of law (legal texts) is the recognition of new general framework of conduct, i.e. of definite rights and duties, connecting all the members of society, recognition of their “objective”, in spite of individual will of a person, socially determined (valuable) character, understanding their content and order of realization, including recognition of possibility of punishment for abusing such rules. Neither legal texts, nor legal values, nor subjective sense of justice, nor individual sense of justice form the law as separate elements. They are united namely by legal communication, occurring as inter-subjective reality, the connecting element of which are interacting subjects. [24] So, the Corporative law in its origin occurs as global law, beginning from the moment, when that, what is now called commercial

organization, had appeared in Europe. The European states have copied different models of each other to create merchant companies, participating in international commerce.

Thus, by communicating approach the law is understood not as objective edict, prescription (will, order, norm), but as that, what occurs only through the procedure of consensus, agreement and understanding with "generalized meaning". The law, in this case, occurs as phenomenon, based on reciprocity. And this idea can be regarded as a way and justice in the law, about which all speak every time. Justice in the law – is the fruit of reciprocity: reciprocal understanding, reciprocal recognition, interaction, reciprocal balance. Observing the connection ontologically of the law with the text of the law, the normativists castrate its human subtract and convert the law from the whole into the abstract institute of social manipulation.

7. Modernization of Legal Policy and Regulation of Anti-Trust Relations in Russia

Civil society and the Rule of law state logically presume each other – the one is unthinkable without the other. At the same time, the civil society is primer: it is the definite premise of the rule of law state. The state with the rule of law – it is such a form of organization and activity of state power, which is based in the relations with an individual and their different unions on the foundation of law norms. By this, the law plays priority role only in that case, where it becomes a measure of freedom of all and each, if the law in force in reality serves the interests of the people and of the state, and their realization becomes the embodiment of justice. The representatives of economic science regard it against logic, that the role of the state on the stage of modernization should be strengthened comparing to the period of reforms, which in the first turn were oriented to liberalization. By this, the modernization from the above – functions of state of priority formation of legislation, securing legal order and legality (law and order). From these thoughts follows a conclusion: the principle of the rule of law in the recent years not only had been strengthened, but on the contrary was damaged (to serve the power is more important than the law). A real strengthening of the state in modernization of economics does not occur. [25] In our

opinion, the development of legislation has still not testified about existence of social-legal statehood. In modern Russia, the legislation develops in leaps. Only on federal level there were adopted more than two thousands of laws. However, the abandonment of normative legal acts creates only illusion of juridical wellbeing. In the sphere of law-making there are obvious problems, but the most trouble seems to be the sphere of realization of law (law application). It is a pity, but the situation with the moral crisis continues to be very serious because of conscious estrangement of Russian society from law and statute. In the whole history of Russia the society has never actually estimated the law, never believed to its power and possibility to serve as a means in consensus of different institutes, to be actual regulator of social processes. [26] The Russian legislation about protection of competition in its main features has adopted the experience of European system of antimonopoly regulation, which is expressed in the principle of regulation and control of monopolistic activity. The Federal law of 26th of July 2006 "On protection of competition" [27] regulates relations, connected with protection of competition both in the goods markets, and in the markets of financial services (bank services, insurance services, market of securities). According to the idea of developer of the Law on protection of competition it should abolish the lacks of previously acting antimonopoly legislation, adapt regulation of competitive relations to realities of Russian economic. Norms of protection of competition are not only in the Law on protection of competition, but in a number of other Federal laws: Constitution of RF, Civil Code of RF, Federal laws of 13th of March 2006 "On Advertisement" [28], of 17th of August 1995 "On Natural Monopolies" [29], of 22nd of April 1996 "On the Market of Securities" [30], of 26th of December 1995 "On Stock Companies//" [31], of 3rd of February 1996 "On Banks and Banking Activity" [32], of 31st of December 1997 "On organization of insurance business in Russian Federation" [33].

8. Modernization of Antimonopoly Legislation in Russia in the period of 2006-2012.

The first antimonopoly law in Russia appeared in 1991. During some years this law and other normative acts survived small punctual amendments, till it became

obvious that it is necessary to develop a new law, responding to the needs of the time and to the situation in the market. So, the Federal law of RF of the 8th of December 2003 No.162-ФЗ, has changed the edition of the article 178 of Criminal Code of Russia, and the article since then is called "Non-permission of limitation or elimination of competition". First, the orientation of criminal law norm has been changed, the object of protection become vaster. In the meaning of previous edition the above named actions were criminally punishable, according to the article 178 of Criminal Code of RF (CCRF), only then, when they had monopolistic character (though till 2003 none of the legal acts had determined the definition of "monopolistic action"). Second, as obligatory participation the damage, done by the criminals, is pointed. By this, the conviction should prove not any, but only big damage, the sum of which goes over one million rubles. Third, the sanction of part one of the article 178 of CCRF was made more lenient. But, formally, the sanction of part two of the article 178 of CCRF become severer. Factually, here it is also possible to speak about mitigation of the punishment. Though the upper threshold of the punishment as deprivation of liberty has not been changed, the lower threshold of this punishment makes up already not two years, but two months. Fourth, a more severe estimation of modern crime done by an organized group has been given. Now, this indication is placed to the part three of this article and thus the severest punishment has been constituted up to seven years of deprivation of liberty. The minimum threshold of punishment became also higher, which now makes up three years of deprivation of liberty. Fifth, into the second part, a new qualifying indication was introduced – committing the crime by a person using one's official status. In connection with the change of criminal legislation in 2004 one can observe that the number of registered crimes, foreseen by the article 178 of CCRF, abruptly decreased. What the Courts practice concerns, the analysis of statistical data of Court's Department of the Supreme Court of Russia shows the following: in 2005, the courts had none of the cases with the conviction in committing the crime, foreseen by the article 178 of CCRF. [34]

The aim of these legislative novella seems to be an additional trying to humanize the criminal legislation in the field of economics, or the legislator intended to give the administrative power an orientation in combating the law-abusing activity of big monopolies.

As a result of it, in 2006 a radical reform of antimonopoly legislation had begun. The two previously laws in force – Federal law of 23rd of June 1999 No.117-ФЗ and the law of RSFSR of 22nd of March 1991 "On protection of competition and restriction of monopolistic activity in goods markets" were exchanged by the Federal law of 26th of July 2006 No.135-ФЗ "On protection of competition". This law introduced the definition of "Collective domination in the market"; prohibition of unlawful state's or municipal preferences (preferential treatment); established unitary rules for biddings; in detail regulated the procedure of solving of antimonopoly cases in the Federal Arbitration Court of RF; introduced the definition of coordinated actions, groups of persons, high monopoly price, low monopoly price; introduced prohibitions of monopoly activity, state control of economic concentration, etc.

In legal normative acts there are no legal definitions of monopolism. The most similar legal category to it, in Russian legislation, is monopoly activity (article 4 of Federal law "On protection of competition". The definitions "monopolism" and "monopoly activity" correlate between each other as the part and the whole. The monopolism is broader, includes in itself, besides monopoly activity other anticompetitive actions. Particularly, as occurrence of monopolism one should understand legal acts and actions of organs of power and administration, restricting competition, as well as agreements or coordinated actions between organs of power and administration, or between them or managing economic entities (articles 15-16 of Federal law "On protection of competition"). The main rule of monopolism is orientation to not permitting, restriction or elimination of competition (article 4 of Federal law "On protection of competition"). The difference between monopolism and unfair competition is seen in that, when the monopolism unlawful actions infringe on the competition itself, i.e. aimed at non-permission, restriction or

elimination of competition. While unfair competition infringes not on competition itself, but on the rules of conducting the competitive fight.

Thus, monopoly activity is qualified as unlawfulness, directed to non-permission, restriction or elimination of competition. By this, the law of competition in some cases establishes enumeration of prohibitions of such activity, the exclusion out of which cannot be made neither by antimonopoly organs, nor by court (e.g., establishment high (low) monopoly prices, imposing for contracting party unfavorable conditions of the contract etc.), and in other cases allows exclusions, which might be made on the basis of rules of reasonableness when solving the problem about prohibition or permission of some kind of monopoly activity (e.g. by agreements or coordinated actions) made by antimonopoly body. [35]

The law on protection of competition presents such corpus delicti: misuse of one's dominating position in the market by economic entity (or by group of persons) (article 10 of the Law "On protection of competition"). Law-breaking/delinquency is an activity of an economic entity (group of persons), corresponding at the same time to two conditions: a) economic entity has a dominating position (quantitative indication); and b) misuses its position, restricting competition (qualitative indication). It is to be accepted that the participants of economic activity as previously, as well as till now, do not have obvious sense of direction to determine what is likely to be "restriction of competition". [36] There is an opinion, that the categories "economic entity", "dominating position" and competition serve both as the key definitions and at the same time as the result of unification of general corpus of misuse of dominating position (article 4 of the Law "On protection of competition"). Having analyzed the problem connected with restriction of correlation of definitions "economic entity" we are attracting the attention to the fact that this problem is totally unusual for the European competition legislation, where it is accepted the common economic-legal term "entity"/enterprise", which embraces a large sphere of participant of trade turnover (The Commerce Code of France). Thus, if the legislator in Russia attaches to the term "economic entity" solely collectively value and connects it with the legal status of subjects of undertaking, but from the

point of view of competition legislature in European countries the definition "undertaking" has essentially substantial significance. [37] In our opinion, the approach in Russia due to its postulates, should be called as minimum irrational.

For the breaking of rules about competition a civil, administrative (articles 14.9, 19.8 of the Code of administrative offences) and criminal legal responsibility (article 178 of CCRF) is established. By this, in the Law on protection of competition out of chapter 8 of the Law "The Responsibility for offences of antimonopoly legislation" excludes such a kind of responsibility as recovery of income, obtained in the result of monopoly activity or infringement of competition (it was practically moved to the next part), as well as compensation of losses, caused to economic entities. As a kind of responsibility also is provided for a forced division or separation of commercial organizations, as well as non-commercial organizations, performing activity which yields/bears/earns for them interest/come/return. There is an opinion, that the prescription and separation of economic entity issued by antimonopoly organ under no conditions can be regarded as civil law sanction. [38] Therefore, it seems that the forcing to cessation of infringement of antimonopoly legislation due to duality of the norm, the execution of which it should provide for, is both an administrative measure of influence, directed to the infringement of public order and a measure of protection of infringed civil law, which is realized in administrative order in accordance with the article 11of Civil Code of RF. According to N.I.Klein, one of the authors of antimonopoly law, in spite of the desire of developers of the Code of Administrative Offences (CAO) to move all the norms, establishing responsibility for infringement of antimonopoly law, into the CAO of RF, two sanctions for the infringement of antimonopoly legislation remained in the Law On protection of competition. [39] The Russian antimonopoly legislation in a big part repeats the norms of French law-maker. [40] And, maybe, not including of the pointed above responsibility into the administrative range is preconditioned by the French roots of Russian antimonopoly law. However, the French antimonopoly legislation belongs not to the administrative, but to the civil one, because the main goal of French law is to recover the losses, occurring for the suffered as a result of unfair actions of his competitor. In the

Russian antimonopoly legislation the sum of revenue obtained as a result of infringement of antimonopoly legislation should not be recovered for the compensation of losses to the favor of suffered persons, but is recovered to the favor of the state, what changes the character of this recovery from compensatory to the penal punitive one, because besides the sum, recovered to the favor of the state, the suffered person has the right to recover the losses. Accordingly, it would be unfair to speak about compensatory character of recoveries to the federal budget. [41]

The Federal law of 9th of April 2007 No. 45-ФЗ "On Introduction of Changes to the Code of Russian Federation about Administrative Offences" (CAO of RF) [42] The CAO of RF was supplemented by the norms about responsibility for misuse of dominating position in the goods market (article 14.31 of CAO of RF), for conclusion of agreement, restricting competition, or for coordinated actions restricting competition (article 14.32 of CAO of RF) for unfair competition (article 14.33 of CAO of RF). The order of calculating of administrative penalty underwent conceptual changes. For misuse of dominating position, coordinated actions and unfair competition have been established so called return penalty, which are calculated out of the sum of the profit, obtained from realization of goods (work, services) in the market of which the offence occurred. These norms are, in principle, new for the Russian legislation and directed to the effectiveness increase of application of sanctions for prohibition of antimonopoly legislation. It seems that we cannot speak about possibility of establishment of administrative in the form of fine penalty for the especial misuse of dominating position according to the Russian law. In France and the USA, the character of the norm of prohibition of misuse of dominating position differs from the character of Russian norm: it contains publicly legal prohibition of offending of economic public order. In the opinion of a number of authors, if the antimonopoly organs had the right to impose the penalty, in addition to the taken measures of restriction, the economic entities would act more carefully in the part of following the norms of legislation about competition. [43]

Thus, the totality of norms, regulating competitive relation in the stock market, forms the sub-institute of the law institute of competition in goods and financial

markets. By that, the main method of influence on competitive relations in the stock market is a public law method, used in administrative law. Mechanisms of civil law responsibility, performed in the form of compensation for the caused losses, is used by the participants of competitive relations insufficient in connection with the complexity of argumentation of the amount of losses and availability of causal relationship between its occurrence and the offence. The legislator does not mention about compensation of losses, caused as a result of infringement of legislation in the stock market from the part of executive power, organs of executive power, subjects of RF and organs of local self-government. Decline or narrowing of criminal law regulation of relations with a simultaneous extension of the sphere of civil law regulation is a regular tendency of social development under the conditions of forming of the state under the rule of law, but public principles of administration of society do not disappear, are not watered down, not diluted, moreover, their significance on the modern stage increases, because civil society not in the less degree requires a disciplining influence from the part of the law, than any others. [44] In the law of different countries of XVIII-XIX centuries, antimonopoly legislation had appeared and developed almost exclusively as a criminal one. The processes of harmonization and unification of legislation in the European Union caused a tendency to new criminalization of monopoly activity, not excluding Germany and United Commonwealth. [45]

The Federal Law of 29th of July 2009, No.216-ФЗ "On Introduction of Changes to the Article 178 of Criminal Code of Russian Federation" put the article 178 of CCRF in a new edition. The second antimonopoly package had provided for the criminal responsibility for agreements, directed to the restriction of access to the market, for misuse of dominating position – establishment of high or low monopoly price, forced imposing unprofitable contract conditions, or denial of conclusion of it. The responsibility can occur both when having damage (a big one – more than one million rubles, especially big – more than five millions rubles), and when obtaining income from unlawful actions in the big (from 5 millions of rubles) or in the especially big dimension (more than 25 millions of rubles). This reformation of

criminal law deserves to be specially discussed. [46] Here we would like to mention only the following: into the criminal legislation had again returned administrative prejudice (collateral estoppels). The modern administrative prejudice (collateral estoppels) is connected with three facts of administrative offences, committed during the period of three years, if a person for their committing was subject to administrative responsibility. However, administrative prejudice (collateral estoppels) acts only in the part of the norm, provided for by the article 178 of CCRF: only in relation of such way of non-admission or elimination of competition, as misuse of dominating position. But the period, during which the person is concerned to be subjected of administrative imposition, lasts only one year from the end of execution of resolution about order of administrative imposition (article 4.6 CAO of RF). In this case it occurs that the legislator out of some reason concerns the third offence to be more dangerous, though it does not differ from the first two, he, moreover, takes into account the fact, that to the moment of punishment of the person for the third similar offence in many cases is regarded either as not having had administrative punishment at all (both cancelled), or has only one not cancelled administrative punishment. We for sure cannot agree with such a notion of repeatedness. [47] The legislator tried to take into account the theories of Criminal law when modernization of the article 178 of CCRF. Thus, the legislator brought the disposition of the article 178 of CCRF into correspondence with the law on the protection of competition. Besides, he tries to concern two approaches by description of disposition of the article: usage of formal corpus // with administrative prejudice (collateral estoppels) to misuse of dominating position in combination with material composition with the indication of “cause of damage in a big dimension”. [48]

9. The Third Antimonopoly Package and Fighting with Cartels. On the 6th and 7th of January 2012 the Federal laws entered into force, which were parts of the so called third antimonopoly package from 06.12.2011 No.401-ФЗ “On introduction of changes to the Federal law “On protection of competition” and different legislative acts of Russian Federation”, and from 06.12.2011 No.404-ФЗ “On introduction of changes to the Code of Russian Federation about Administrative Offences”.

Conditionally, all the novels of the third antimonopoly package, dedicated to antimonopoly agreements, can be divided into three groups:

- changes, describing the definition of "cartel" and specifying a number of adjacent definitions (for instance, "coordinated actions");
- changes, concerning power of antimonopoly organs in countering of anticompetitive agreements;
- changes, concerning problems of responsibility for anticompetitive agreements.

In Russian legislation a term "cartel" was introduced (part 1 of article 11 of the Law on protection of competition. Cartel is an agreement between competitors, which leads or can lead to offences (there are five of them), which are the most dangerous for the economics. In the USA, one of rather new interpretations of antimonopoly law is a doctrine of "behavioral parallelism" (prohibition of parallel actions). [49]

In the new edition of the part 2 of article 3 of the law On protection of competition the problems of ex-territoriality are specified. It allows antimonopoly organs to apply the law about protection of competition, when having agreements, even to international cartels and to cartels with participation of Russian entities, established abroad (so called "doctrine of influence"). That is why in antimonopoly law the principle of ex-territoriality is one of main answers of national antimonopoly reaction on changes in global economics. [50] One more amendment, regulating the sphere of application of competitive legislation, concerns the change of definition "economic entities" (point 5 of article 4 of the Law on protection of competition). It allows to control the behavior in the market, not excluding the conclusion and realization of anti-competitive agreements, the number of categories of its participants, who previously due to specific status, were fallen out of the field of observance of antimonopoly organs.

10. Changes of problems, concerning the responsibility for anticompetitive agreements (article 178 of CCRF).

In the paragraph 1 of article 178 of CCRF, again the words "conclusion of coordinated actions, restricting competition" have been changed with the words "conclusion by economic entities – competitors, an agreement, restricting competition (cartel)".

It means, that the action of the article 178 of CCRF, from now on, is spread only over participants of cartels – agreements, restricting competition, between economic entities – competitors, and from the Criminal code criminal responsibility for the coordinated actions and anticompetitive agreements with participation of organs of power have been excluded. Coordinated actions are taking out of the CCRF within the framework of common tendency on liberalization of measures of responsibility for economic crimes with the aim of elimination of unnecessary uncertainties and risks for business due to virtuality of this definition about competition of agreement with participants of organs of power – not to duplicate other articles, providing for responsibility for official crimes.

The legislator introduced an amendment to the comment 3 of the article 178 of CCRF and it concerns the question of release on criminal responsibility of participants of cartel. The words “having recovered the caused damage or having transferred to the federal budget the income, obtained” were changed with the words “having recovered damage or in some other way made amends for the damage, caused”. What does it mean?

Till the present time a theory worked, according to which the release on criminal responsibility for participation in cartel was subject a person, who fulfilled a number of conditions, including transferring to federal budget income from participation in anticompetitive agreement. This norm was unfair, because in a cartel takes part an entity, it does not become income, and its transferring to federal budget should do a physical person/citizen. In addition, in practice it often occurred that this physical person was even not the general director of company, but someone of managers, who had undersigned the documents, executing instructions of leadership. Moreover, in a public form this norm practically did not work.

The present edition of comments to the article 178 of CCRF actually means, that the main condition of release on criminal responsibility of the person, who is a participant of a cartel, - it is a conclusion of law enforcement bodies about that, whether this person had contributed to detection of the crime and made amends for the damage, caused by his actions, by rendering assistance for the investigation. It

seems, that in such a form this norm will be more actively applied by the law enforcement bodies, what should allow to increase the level of conclusive base in the cases about cartels. [51]

Changes have also occurred in corresponding norms of the Code about Administrative offences (CAO), the most serious of which concern the questions, regulating the order of calculating the penalty. In 2007 they were introduced into the Code about Administrative offences for the offences of antimonopoly legislation – penalty from 1to 15% of annual revenue of a company. [52]

Till the recent time similar regulation in the Law was absent, and the methodic of penalty calculation procedure, used by the antimonopoly organ, was a document for inner usage. Now, in accordance with the changes, introduced to CAO of RF, the order of calculation of penalties, including the rules of their increase or decrease depending on availability of the facts, mitigating or aggravating administrative responsibility, is established on legal level. In addition, in the CAO a comprehensive list of facts, to be taken into account when doing this, has been prescribed. Now, the calculation of the revenue penalty will look as the following: the base penalty (the middle between minimum and maximum penalty, i.e. 3% from the annual revenue of a company) decreases on one eighth between minimum and maximum penalty for each mitigating fact and increases on the same value for each aggravating fact. The availability of such criteria should simplify and put in good order the work of antimonopoly organs and of courts, and surely will be positively estimated by those, on whom these penalties are imposed.

One more of the trends in development of antimonopoly regulation becomes the establishment of personal responsibility of officials of companies for the offence of legislation in the form of application of disqualification, at present time, besides of Russia, exists already in Australia (according to the law on trade practices) and I Sweden (according to the new Law on competition for participation in corporations). The specific feature of the rule of disqualification in Sweden is that not only top-manager, but other officials of the company can be subjects to disqualification. According to the Federal law of 26.07.2007 No.135-ФЗ “On protection of

competition", disqualification in Russia also might contain quite a big number of persons.

The CAO of RF defines disqualification as deprivation, for the physical person, of the right to occupy a leading official position in the executive organ of administration of legal person, to be a member of director board (supervisory board), perform an undertaking activity on management of legal person, as well as to perform administration of legal person in other cases, provided for by the legislation of RF (par. 1 of article 3 of CAO of RF), what illustrates taking into account of the principle of equivalence of punishment and of person of offence./ wrongdoer.

Disqualification may be applied in that case, when it is provided for in sanctions, corresponding to the articles of CAO of RF, and belongs to so called "judicial/courts" administrative punishments. All this allows to formulate an opinion about disqualification as a legal consequence of an offence, which occurs in form of deprivation or restriction of corresponding rights for a certain period of time and is executed in a special order. [53]

Important changes occurred also in problems concerning responsibility for conspiracy/arrangements when bidding, were introduced by the article 14.32 of CAO of RF. The previous questions about the rule of calculation of revenue penalties when bidding (for instance, there are different approaches to that what is, in this case, to be regarded as "market" where an "offence" was committed), now disappeared: it was legally established, that a revenue penalty for the mentioned kind of anticompetitive agreements, if they occur when bidding, will be brought to the original/initial price of the subject of bidding and will be from 10 to 50% of this cost.

The Russian economics, as well as Russian antimonopoly legislation, has a number of features, which in their most part are predetermined by the geo-politic and historic-social conditions of development of the country. In the economics of Russia, comparing to the western countries, till now, a great role plays the state. This in many respects explains the fact that in Russia till the present day many markets are monopolized either by the state and municipal enterprises, or by economic entities, formed as a result of privatization.

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Mazurenko A.P.

LAWMAKING POLICY AS A NEW DIRECTION IN LEGAL STUDIES

I. Introduction. Two decades of Russian reforms are accompanied by dramatic changes in the law. Virtually re-formed by all the main areas of legislation, a much higher level elevated the role of law as the principal means of regulating social relations. Its important role in the mechanism of state took the legislature. Legislating in the country is developing at an unprecedented pace. So, if 70 years of the Soviet Union was issued about 80 acts of the union legislation, but today only at the level of the federal parliament adopted 450 laws per year. But, despite these very positive changes, all the more clearly declare themselves the problems of Russian law-making, which urgently require modernization of its system, develop scientifically sound strategies and tactics in the named field, using new tools to address the numerous deficiencies making activity.

Experts estimate that today one in every seven law contains serious errors. Typicality of lawmaking errors as unsystematic legal acts, their internal contradictions and unnecessary multiplicity, abundance in the legislation of declarative rules, are not equipped with mechanisms for implementation, as well as recurrence of similar mistakes over the years talk about their systemic nature. In

addition, the lawmaker was not able to fully synchronize ¬ rovat federal, regional and municipal levels right ¬ creative process.

It is still not established a systematic, balanced approach to legal strategy and tactics do not become the norm ¬ mine if legal reform reliance on scientific analysis and prognosis, responsiveness to public opinion and qualified assessment of the likely consequences of decisions. Legislation in many respects does not manage to timely and adequately regulate already actually existing social relations of stimulate the development of new and necessary social relationships [1]. Too underestimated the value of the planning elements in lawmaking.

All of this suggests is still low as a law-making work, it lags far behind the economic, social, political and other needs of society, the large number of lawmaking mistakes and other errors in the legal regulation. Cope with the aforementioned problems with disposable, episodic action impossible. Requires a systemic response - legislative creation policy, which differs just a systemic nature, joining a number of tools lawmaking process in an interrelated mechanism.

Legislative creation of ¬ policy is a way to improve and update the law-making, improving its effectiveness. This type of policy is required for forming opaque ¬ contradictory, and internally unified, coherent, consistent ¬ th lawmaking process to make it systematic and legal certainty. In this context, there is an obvious need for a study of features, identifying the nature and development of the conceptual foundations of law-making policy as an important factor in modernizing the law-making in the Russian Federation.

Questions of legislative policy raised at the beginning of XIX century in the writings of the founder of legal positivism D. Austin. However, further legislative creation (legislative) policy has not been studied separately and in fact identified with the politics of law (AI Ilyin, BA Kistyakovsky, G. Landau, SA Muromtsev, PI Novgorodtsev, LI. Petrazhitsky, GF Shershenevich, etc.)

One of the first to the study of modern law-making policy turned SV Polenina. Followed by the individual aspects of the problem highlighted in the work of scholars such as JG Arzamas, IA Gdalevich, LV Goloskokov, AD Revelers, ML Davydov,

AB Didikin, VA Zatonsky, TA Zolotukhin, IA Ivannikov, NV Isakov, MA Kostenko, AJ Lavrik, AV Malko, AY Mordovtsev, AI Ovchinnikov, MP Petrov, O. Rybakov, KA Jets, V. Subochev, SJ Sumenkov, ES Selivanov, VV Trofimov, VI Shepelev, II Shuvalov, OV Yatsenko et al.

At the same time on this subject is still suffering from a distinct lack of monographic studies. Preferential attention of Russian scientists in recent years have focused on analysis of individual problems of lawmaking, legislative technique, the genesis of Russian parliamentarism, etc. Questions directly to the law-making policy, mainly considered in the context of the research problems of modern Russian legal policies. The results of these studies have identified a number of discussion points, and sometimes just a new, untapped facets of this complex phenomenon of political and legal reality. In the context of events in the country and the world changes, further in-depth analysis of demand questions about the nature and purpose of law-making policy, its social and moral principles, the impact on the processes of humanization of law, strengthening the rule of law, the rights and lawful interests of individuals, building a democratic state of law and etc.

II. Formulation of the problem. As a result, held in Russia over the past years did not fully effective law-making policy Gather ¬ elk contradiction between the real public relations and mi ¬ existing system of law to govern these relationships. This contradiction constitutes an important social problem that requires a scientific understanding and practical solutions.

Based on the foregoing, the purpose of this study is to examine the problems pravoobrazovaniya in Russia and propose a mechanism for law-making policy analysis capacity of its impact on development and modernization of lawmaking. Specifics of the study, as well as stated above objective, predetermined the need to use different methods of learning. His total was the ideological basis of dialectical-materialist approach to explaining the phenomena and processes of political and legal reality. First of all, we should highlight elements of this method as the application of universal principles of scientific knowledge: the objectivity and comprehensiveness, the concrete-historical approach and completeness of the study. In addition to the

work used, and other scientific and special techniques such as analysis and synthesis, induction and deduction, systematic and structural approach, formal logic, specifically, sociological, statistical and other methods.

III. Results. For the modern Russian state is vitally important need is for comprehensive modernization of all spheres of his life, including law-making. It should be recognized that the problems of the last has always been and remain a subject of close attention of scientists, politicians, representatives of government, business and ordinary citizens. This circumstance is due to the need to constantly improve various forms of state guidance of society, an important part of which supports law-making.

Currently, we are witnessing the intense pace of legislative activity that allows a number of scientists say that Russia is experiencing a kind of "law-making boom" [2]. In this case, not all cases, the content of legislation legally impeccable. This is, in particular, according to the annual reports of the Council of Federation on the status of legislation in the Russian Federation. So, more than 80% (!) Acts of the federal legislation are the laws on making amendments and additions to existing legislation [3]. Correction lawmaking at the federal level has become an avalanche character. Even more depressing situation in Russian regions.

Existing legislation often lags behind the swift ¬ but the changing realities of life. Arising in this connection gaps generate a lot of outstanding issues and disputes over the implementation of the government, protection of individual rights, property, etc.

It should also be said about the randomness in the formation of an array of regulations, a violation of the priorities in the legal regulation, unbalanced ¬ vannosti in the current legislation, the enactment of new laws without linking them with existing, violation of the system connected ¬ bonds between the laws and regulations, between the laws and regulations of the treaty ¬ mi, lack of unity of terminology, which violates agreed ¬ sion system of legal acts of undue haste drafting important legal decisions, developed the practice of non-compliance with the rules of the legislative law-making machinery [4]. As rightly pointed out by VN Lopatin, laws

are made and often without sufficient examination of the consequences of their implementation, there ¬ linking with existing legislation and international law, in order to lobby for certain social groups ... [5].

These drawbacks in the development of legislation erode unity ¬ Noe legal space of Russia, pose a threat to its preservation. They generate a weakening of the legal system and its uneven effects throughout the country, opposition to the federal government and regional structures, legislative and executive bodies ¬ governmental; ineffective legal support for various sectors of the economy and social sphere, which is fraught with disruption of current and promising ¬ tive socio-economic programs; contradiction between the form ¬ mal rules and "shadow law" between official and actual ¬ skim relations; instability of the state and public institutions and little support for their population; contradictory relation ¬ solution of national or international law [6]. Existing problems in the legal regulation of GR ¬ move for an indefinite time the idea of forming and establishing the rule of law in Russia [7], whose foundation is based on the prin ¬ groin rule of law, the most complete support of the rights and freedoms of Che ¬ rights.

In the post-Soviet Russia was hyper ¬ trofirovannoy role of political factors, political ideology, not national, but the nature of the group, which resulted in a sharp change in ideological orientation pravotvorche ¬ properties. Leading vector orientation was for approval to the legislation of the liberal-democratic ideas, values and institutions, and mainly by borrowing Western models and standards. This method of law making was typical for Russia at the end of last and the beginning of this century. In recent years the situation has changed to some extent. Began to realize the truth that focus exclusively on the Western model of development does not meet the expectations of the majority grew ¬ sian citizens, and the borrowing of international achievements in the legal field should always be taking into account national circumstances and by adapting to the Russian reality [8]. Today, a change in ideological orientation in the law-making to the legal modernization in all spheres of society and state, a gradual shift from liberalism in the direction of the

neoconservative ideology, involving social progress and updating based on respect for the traditional values.

It should be noted that the idea of modernization of the law was first contacted by representatives of the scientific community [9], and even a few years before the famous article of the Russian President "Forward, Russia!" Where he announced the principles of a new political strategy, which were later fleshed out in its annual Address to the Federal Assembly is in the form of the concept of comprehensive modernization of the country.

In our view, the main goal of modernization of lawmaking serves to create conditions for accelerated development of legislation. As rightly pointed VP Eagles: "The main thing - to be able to predict the life passes a law to simulate the situation in its scope. Unfortunately, most of our laws - it's additions and changes to previously adopted basic laws. Proportion of catch-up lawmaking is large enough [10]. In other words, if we want to see the modernization of legislative drafting as a process of continuous updating of advanced legislation, you must actively engage to ensure law-making factors: programming, informational, political, legal, organizational, and others, to anticipate possible social relations, new and ever-changing needs of society and state. This is indicated, and ex-chairman of the upper chamber of Russian parliament S. Mironov: "To effectively address the challenges posed by our citizens, we must be proactive, raise the question of establishing the legal framework aimed at the prospect of creating conditions for implementing the strategic plans of the country" [11].

Problem of advanced development of legislation, understood as a priority the modernization of domestic lawmaking, is able to solve a scientifically sound and socially oriented legislative creation policy in the formation of a leadership role to play in the modern Russian state is interested and active participation of civil society actors.

This poses a problem of legal science to develop new means of influencing law-making to its modernization. Under such an upgrade should be understood as a process of permanent renewal, updating ideas and plans of lawmaking, which allows

a mobile link law-making activities with socio-economic, political, legal and spiritual needs of society, to make lawmaking more flexible and adequate to the challenges of time.

The complex is available today in this field defects, and, above all, the backlog of lawmaking by the objective needs of society adversely reflects ¬ is on state-legal development of the country, which ultimately leads to social unrest, riots, the threat of destabilizing ¬ tion of public-private relationships . Deformation of the social mechanism of lawmaking, not only affect the state of the law-making and the quality of legislation, but also imply a more profound implications, affecting law enforcement, legal behavior of citizens and the state of justice [12]. In terms of modernization of the legal system is one of the main objectives - the removal of these deformations, the improvement of the social mechanism of lawmaking, which ¬ rye can be achieved, including through the country's competent law-making policy of maximum objective consideration of the interaction of all factors that have a direct or indirect influence on the development of Russian law-making.

IV. Conclusions. The scientific novelty of this paper is that the author, based on research carried out by him, worked out the theoretical and practical recommendations concerning the need for law-making policy as a factor in modernizing the law-making in contemporary Russia. The novelty of these results is also reflected in the fact that in the paper by studying a variety of sources, carried out a systematic theoretical analysis of this phenomenon, characterized the current state of lawmaking, identifies their shortcomings, are named by their causes. Theoretical analysis of law-making policy organically amended application. Developed specific proposals for overcoming the identified deficiencies, formulate new approaches and conclusions relating to the appointment and place of law-making policy in the Russian socio-legal and public policy practices, revealing the possibility of its positive impact on law-making process. Substantiated the leading role of higher authorities in establishing an effective law-making policy.

These and other findings supplement and concretize this growing and highly demanded in modern conditions the direction of legal science, which is a legal policy,

as well as enrich the theory of lawmaking and the whole general theory of law with new approaches to solving practical problems of law-making activities. The theoretical significance of the article is that its justifications for the concept of law-making policy, fills a gap in legal science, on the conceptualization of this type of legal policy. They clarify and update the largely conceptual apparatus on the above issues, as well as contribute to the development of the theory of lawmaking and in general the general theory of law, promote better understanding of the problems dealt with in science.

The practical significance of this work is that developed and justified in its findings and recommendations to improve the lawmaking process can be used in a real law-making in research and development of general theoretical and industrial problems of law-making policy in the educational process in teaching courses of the theory of State and Law , Problems of Theory of State and Law, special courses on legal technology, legal and law-making policies, issues and law-making, etc. In addition, they can serve as a basis for further research into the formation and implementation of Russia's law-making policy.

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AUTHOR INDEX

Devyatak D.A	student		Volzhski Volgograd region. 404131
Musayeva AO,	student		Volzhski Volgograd region. 404131
Stepanova A.V,	Candidate of Legal Sciences	docent	Volzhski Volgograd region. 404131
Kashkarova O.	graduate student		Kharkov 61140
Obraztsova IA	applicant		Kharkov 61140
Tishchenko A.	applicant		Kharkov 61140
Kharamaza A.A.	Candidate of Legal Sciences	docent	Kiev 01011
Lavretieva N.	Ph.D. in History	docent	the city of Moore Vladimir region 602253
Lavretieva T V	Candidate of Political Sciences	docent	the city of Moore Vladimir region 602253
Gak E A	student		Kiev 03194
Yu.V. Onishchyk	Candidate of Legal Sciences		Vishnevoye Kiev Svyatoshinsky area Kiev region. 08133
Leonid Belkin	Ph.D.	docent	Kiev 04209
Vorotilina T.V.	Candidate of Legal Sciences	docent	Stavropol 355004
Pershina E.A.	Candidate of Legal Sciences	docent	Stavropol 355004
Nykytenko O. V	student		c.Slavyansk Donetsk 84109
Shirkova I. V.			c.Slavyansk Donetsk 84109
Chernova E I	Candidate of Legal Sciences		Sterlitamak The Republic of Bashkortostan 453129
Shkurko N S	PhD		Yakutsk Sakha (Yakutia) 677000
Morozov G V	applicant		Lugansk Lugansk region 91007
D. Bakaiev	applicant		Kiev 02218
Zarovneva G S	Candidate of Legal Sciences	docent	Vladivostok Primorsky Krai 690091
Yarovenko N S	Doctor of Laws	professor	Vladivostok Primorsky Krai 690091
Ivanov A.M	Candidate of Legal Sciences	docent	Vladivostok Primorsky Krai 690091
Korchagin A.G	Candidate of Legal Sciences	docent	Vladivostok Primorsky Krai 690091
Mazurenko A.P.	Doctor of Laws		Vladivostok Primorsky Krai 690091