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Section 1. Information law

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The Information Society and Information Security

Abstract: The author focuses the reader's attention on the need for formation of information society and information security strategy in Russia and justifies the importance of this stage in the development of the modern state.

Keywords: information society, information weapon, information security, information security strategy.

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Информационное общество и информационная безопасность

Аннотация: Автор акцентирует внимание читателей на необходимости формирования информационного общества и стратегии информационной безопасности в России и обосновывает важность этого этапа в развитии современного государства.

Ключевые слова: информационное общество, информационное оружие, информационная безопасность, стратегия информационной безопасности

Эволюция общественных отношений в развитых странах, приведшая эти страны к созданию развитой экономики и высокого уровня потребления, привела и к значительному росту потока разнообразной информации, что неизбежно потребовало создание и постоянного развития различных информационных технологий. А это, в свою очередь, привело к созданию новейшей формации — информационного общества.

Таким образом, можно говорить о том, что информационное общество это фаза современной цивилизации. Её появлению мы обязаны информационной революции, инструментом которой стала всеобщая компьютеризация практически всего населения развитых стран, и возможности использования компьютерной техники на производстве и в быту, что дает практически каждому человеку возможность получения любой необходимой информации. На этой почве произошли серьезные изменения в системе общественных отношений, обеспечившие реальную возможность самореализации личности.

Само информационное общество не может появиться из небытия. Оно зарождается в недрах обычного общества, но в ходе научно-технической революции происходит фонтанирующий выброс

информации, которой члены общества хотели бы обмениваться. Так как в ходе обмена количество информации многократно вырастает, это приводит к быстрому витку развития цивилизации, радикально воздействует на экономику и многократно усиливает интенсивность товарно-транспортных потоков. А это, в свою очередь, является активным фактором превращения информации в крайне необходимый, а главное — легкодоступный, ресурс для широких масс, что дает возможность для широкомасштабного информационного воздействия на большие группы населения.

Опыт США, Великобритании, Франции и других экономически развитых стран продемонстрировал, что все страны развиваются очень неравномерно, опираясь преимущественно на собственные возможности, сформированные в каждой стране под влиянием её культурного развития, экономического потенциала, сложившимися политическими и экономическими условиями и возможностями. В современный период развития мировой экономики эти страны вступили с развитой и достаточно эффективно функционирующей экономикой. Это даёт им возможность обеспечивать высокий рост информационных потребностей, порождающий сбыт информационных продуктов и услуг по их созданию, за счет наличия платежеспособного среднего класса, являющегося основным потребителем информационных услуг. Тем не менее, и в этих странах назревают проблемы связанные с недостатком финансирования среднего класса, что приводит к уменьшению потребления информационных услуг, и, как следствие, порождает застой.

В то же время бюджеты этих стран по-прежнему располагают серьезными свободными средствами, которые они могут направить для инвестирования более активного развития инфраструктуры изготовления информационных продуктов и услуг по их внедрению. В этих странах на сегодняшний день сложилось достаточно хорошо развитая инфраструктура производства информационных продуктов и услуг, отлаженная система компьютерного образования и обширная сфера их применения. Имея серьезный опыт построения информационного общества, все развитые страны на государственном уровне приняли стратегии и программы построения информационного общества и обеспечили этому процессу высокую степень финансирования.

Таким образом, страны, вступившие на путь создания информационного общества, должны реально осознавать на какие ресурсы они могут рассчитывать при формировании и развитии информационно-экономического пространства, создания рынка новых информационных технологий и формирования банков данных общедоступных информационных ресурсов. Для этого необходимо реальное понимание своих финансовых и научных возможностей, так как чем больше будут вложения, тем выше окажется и результат, и наоборот. Например, по сведениям из открытых источников, в настоящее время только расходы бюджета США на информационную безопасность дойдут в 2017 году до $19 млрд., а в целом на информационные технологии расходуется около $80 млрд. Сопоставимы с США и объемы капиталовложений и в других развитых странах.

В то же время, этот путь пока ещё не совсем реален для современного российского государства и общества, так как он требует значительных капиталовложений в достаточно короткий интервал времени: не менее 7–8% ВВП и время, в течение не менее 10–15 лет, необходимые для выхода на среднеевропейский уровень информатизации и её защиты. А таких возможностей, и финансовых, и технологических у России пока нет.

Накладывает свой отпечаток и фактически экономическая блокада, которая скрывается за завесой красивых слов о «нарушениях демократии» или «высокой агрессивности», но на самом деле явная конкурентная борьба с нарождающейся экономикой крупной ядерной державы. В тоже время, запрос на построение информационного общества в России огромен и несоизмерим с ее возможностями на данном этапе развития.

Интеллектуально население намного обогнало экономические возможности страны. Но этот недостаток необходимо превратить в достоинство. Следовательно, России необходимо искать альтернативный путь, ориентированный, прежде всего, на социально-политические и культурные особенности многонационального российского общества и требующий минимума капиталовложений

со стороны государства. От государства необходимо потребовать сосредоточить максимальные усилия на задаче добиться хотя бы минимальных темпов экономического роста и убрать все преграды для быстрого развития коммерческих структур.

Для России с ее традиционно высоким образовательным уровнем и пока не растраченным интеллектуальным потенциалом присутствует реальный шанс, опираясь на не прерванный информационный поток, сделать «рывок» и добиться возрождения утраченных позиций в реальном секторе экономики, используя успехи образования и науки в качестве конкурентного преимущества. В условиях «взрывной» эволюции это дает возможность, по необходимым для страны позициям не только догнать, но и локально перегнать, не догоняя, развитые страны в полном объеме.

Однако на этом фоне многократно возрастают угрозы информационной безопасности России. Позиционная, вялотекущая информационная война в этой сфере из своей традиционной формы плавно начинает переходить в открытую информационную войну и угрозе национальной безопасности в информационной сфере.

В этих условиях, для противодействия противнику, необходимо точно определиться с характером угроз. Условно, основные угрозы информационной безопасности России можно разделить на два типа: внешние и внутренние. К внешним источникам угроз относятся: во-первых, открыто проводимая не дружественная политика многих экономически развитых государств, направленная прямо против экономических интересов РФ и, соответственно, с задачей вытеснения России с внешнего и внутреннего рынков, особенно в сфере информации, А это неизбежно приводит к обострению конкуренции в сфере производства информационных ресурсов и технологий. Во-вторых, тайная, а иногда и явная поддержка деятельности международных террористических организаций, являющихся серьезной угрозой для нормального функционирования информационных и телекоммуникационных систем, что может привести к серьезным проблемам для ещё слабой возрождающейся экономики России.

К внутренним источникам угроз информационной безопасности РФ относятся: во-первых, недопустимо слабое состояние отечественного сектора реальных отраслей экономики и особенно в секторе промышленного производства, что многократно уменьшает наличие рабочих мест и увеличивает социальную напряженность; во-вторых, неблагоприятная криминогенная обстановка, подогреваемая возможностями получения криминальными структурами доступа к базам данных различных государственных (ГИБДД, налоговые органы и др.) и негосударственных (коммерческие банки) структур, что приводит к утрате конфиденциальной информации и снижению степени доверия граждан к государству в информационной сфере; в-третьих, это ещё недостаточная координация деятельности всех структур государственной власти и органов местного самоуправления по формированию и реализации единой государственной политики в области обеспечения информационной безопасности РФ; в-четвертых, неразвитость форм общественного контроля за деятельностью государства в информационной сфере.

Эти угрозы возникли не на пустом месте и не без оснований. В настоящее время против России странами Запада, уже ведется практически открытая информационная война с использованием всех видов «информационного оружия»: СМИ, каналов Интернета, «мягких методов» влияния на состояние умов и др. Но уже предпринятые, плохо скрываемые, попытки развалить государство в России, подобно тому, как ранее был развален СССР, не увенчались успехом.

Россия оказалась более целостной, как структура, с более тесными связями между собой как территорий, так и национальных групп населения. Более того, на Западе вначале и не заметили возрождения экономического потенциала России как единого и мощного государства. И на данном этапе развития общества, победа в такой войне невозможна в принципе. Ведь речь идет о мощнейших ядерных державах, в принципе не признающих капитуляцию. Мнение о слабости России как великой державы оказалось ошибочным, так как многие западные аналитики спецслужб выдали желаемое, за действительное.

В этих условиях на современном этапе развития отношений между Россией и странами

Запада существенно возросла угроза применения информационного оружия против информационной инфраструктуры Российской Федерации. Причем, уже не скрываясь, некоторые государственные деятели прямо говорят о необходимости применения такого оружия против России, ставя её в один ряд с международными террористическими организациями. Разработка рядом государств стратегий ведения информационных войн, предусматривающих создание средств опасного воздействия на информационные сферы других стран, прежде всего Россию, нарушение нормального функционирования информационных и телекоммуникационных систем, сохранности информационных ресурсов, получение несанкционированного доступа к ним является одним из реальных источников внешних угроз национальной безопасности нашего государства, не считаться с которыми, не могут себе позволить здравомыслящие политики.

Чугунова К. Ю. определяет следующие признаки информационного оружия: «а) осуществляет неправомерный доступ, уничтожение, модифицирование, блокирование, копирование, предоставление, распространение и иные неправомерные действия в отношении информации; б) нарушает порядок доступа к информации и в целом оказывает неблагоприятное воздействие на информацию; в) воздействует на средства обработки информации» [1]. Анализируя перечисленные признаки можно прийти к вводу, что одним из наиболее эффективных путей противодействия информационному оружию является совершенствование правового регулирования в области обеспечения информационной безопасности российского государства.

На это в настоящее время и направлены основные усилия государственных структур, отвечающих за эту деятельность. Уже неоднократно принималась Доктрина информационной безопасности Российской Федерации и сегодня действует её крайняя версия утвержденная Указом Президента Российской Федерации 05.12.2016 № 646. Однако, как и ее предшествующие версии, она не имеет статуса федерального закона, что снижает возможность достижения запланированных целей. При этом, рассматриваемая доктрина представляет собой совокупность официальных взглядов государства на цели, задачи, принципы и основные направления обеспечения информационной безопасности Российской Федерации.

Российское общество должно, наконец, реально осознать, что информационная безопасность является составной частью национальной безопасности Российской Федерации и в современном мире всё более выходит на первый план. Это означает, что национальная безопасность РФ, зависит, главным образом, от обеспечения информационной безопасности и эта зависимость, в условиях начинающегося подъема российской экономики, будет только возрастать. Таким образом, Российская Федерация больше не может игнорировать вопросы использования информационного оружия и защиты национальных интересов в этой сфере.

Всё вышесказанное позволяет констатировать, что уполномоченными государственными структурами обеспечению информационной безопасности Российской Федерации уделяется определенное внимание, в рамках обеспечения национальной безопасности [2].

В тоже время становится всё очевиднее, что этого внимания, в условиях прямой конфронтации со странами Запада, явно недостаточно. Необходима концентрация усилий не только государственных структур, но и всего общества, что делает необходимым поднять статус принимаемых в этой области нормативных актов, так как проблема использования информационного оружия до сих пор, в основном, регулировалась Указами Президента РФ и Постановлениями Правительства РФ и оставалась за пределами рамок законодательного регулирования.

Список литературы:

1. Чугунова К. Ю. Информационное оружие как угроза национальной безопасности Российской Федерации//Актуальные проблемы российского права. – 2015. – № 7. – С. 59–64.
2. Проект Концепции Стратегии кибербезопасности Российской Федерации. URL: http://council.gov.ru/media/files/41d4b3dfbdb25cea8a73.pdf (дата обращения: 20.01.2017).

Section 2. Commercial law

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The subsequent position of the UK after the Brexit in the international community of States as a continuing WTO Member State

Abstract: If Exit Treaty can not be concluded between the EU and the United Kingdom in the given period of time according to Article 50 of TEU. What are the principles governing the subsequent position of the UK in the international community of States as a continuing WTO Member State?

Keywords: the European Union, the United Kingdom, the Brexit, the Treaty on European Union, the key principles of the WTO, World Trade Organization.

To start with, the British voted for a British exit, or Brexit, from the European Union (the EU). It was done by means of referendum that is — a vote in which everyone (or nearly everyone) of voting age could decide whether the United Kingdom (the UK) should leave or remain in the EU. The decision of exit won by 52% to 48%. The referendum turnout was 71.8%, with more than 30 million people having voted (according to BBC News) [1]. Theresa May revealed ahead of her first speech as Prime Minister at the Tory Party Conference that she would trigger Article 50 no later than the end of March 2017. That means Britain should officially leave the EU no later than April 2019 (according to Sunday Express) [2]. The process is supposed to take two years but many scientists and experts believe that it could take longer time.

When the European Union member states drafted and then approved the Treaty of Lisbon in 2007, they did not think anyone would ever want to leave. It was a few years before the Eurozone crisis, and the bloc was still glowing from its watershed expansion eastwards. So when, for the first time in its history, the EU included an Article 50 — for a potential exit, they left it deliberately vague. "*The Treaty of Lisbon was drafted with the idea that Article 50 — Treaty on European Union (TEU) would not be used, and to make it pretty hard to exit in a smooth way*" says Chris Bickerton, a lecturer at Cambridge University and author of "The European Union: A Citizen's Guide" [3, 96].

What are the principles governing the subsequent position of the UK in the international community of States as continuing World Trade Organisation (WTO) Member State? In order to answer this question, we need first to consider **Article 50** — Treaty on European Union (TEU). The Procedure of Treaty is defined in this Article as following:

"*The formal withdrawal process is initiated by a notification from the Member State wishing to withdraw to the European Council, declaring its intention to do so. The timing of this notification is entirely in the hand of the Member State concerned, and informal discussions could take place between it and other Member States and/or EU institutions prior to the notification. The European Council (without the participation of the Member State concerned) then provides guidelines for the negotiations between the EU and the state concerned, with the aim of concluding an agreement setting out concrete withdrawal arrangements. These arrangements should*

also cover the departing Member State's future relationship with the Union. The Union and the Member State wishing to withdraw have a time — frame of two years to agree on these arrangements. After that, membership ends automatically, unless the European Council and the Member State concerned jointly decide to extend this period" (Article 50 (3) TEU) [4].

So, assuming that no Exit Treaty can be concluded between the EU and the UK during two years and that the European Council and the Member State jointly cannot arrive at decision to extend this period, thus membership of Britain in the EU will end automatically (according to Article 50 — TEU). The terms of exit will be negotiated between Britain's 27 counterparts, and each one will be able to veto the conditions. After that, a new form of relationship between the Member State and the European Union will start, moreover, the UK will save continuing membership in World Trade Organisation (WTO).

There is still some uncertainty about what will happen once Britain leaves the EU because it will have to make new trade agreements with the rest of the world. The EU would continue to be the world's largest market and the UK's biggest trading partner. A 43-year-period of treaties and agreements covering thousands of different subjects was never going to be a simple task. It is further complicated by the fact that it had never been done before and negotiators will be, to some extent, making it up as they go along. The post-Brexit trade deal is likely to be the most complex part of the negotiation, because it needs the unanimous approval of more than 30 national and regional parliaments across Europe, some of whom will be likely to hold referendums.

Before we explain the UK position in the international community as a Member State of WTO, different models must be shown as well because nobody can predict the future of Britain now. The UK must invoke Article 50 of the EU Treaty, which could lead to several alternatives to membership. A position of the UK in WTO is one option. To begin with, the first option is '**doing a Norway**' and joining the European Economic Area (EEA). European Economic Area gives European countries that are not parts of the EU a way to become members of the Single Market. The EEA comprises all members of the EU together with three non-EU countries: Iceland, Liechtenstein and Norway [5]. Members of the EEA are parts of the European Single Market and there is free movement of goods, services, people and capital within the EEA. Members must implement EU rules concerning the Single Market, including legislation regarding employment, consumer's protection, environmental and competition policy. This would minimise the trade costs of Brexit, but it would mean paying about 83% as much into the EU budget as the UK currently does. It would also require keeping current EU regulations (without having a seat at the table when the rules are decided) [5]. So, its economic relationships with the EU would not change significantly. However, Britain would be outside the common agricultural and fisher policies.

Second option is '**doing a Switzerland**' and negotiating bilateral deals with the EU, what is more Switzerland is neither a member of the EU nor the EEA. It participates in a particular EU policy and programs. Switzerland is also a member of the European Free Trade Association (EFTA), which provides for free trade with the EU in all non-agricultural goods. The country is a part of the single market for goods, but not services. The bilateral treaty approach allows Switzerland the flexibility to choose the EU initiatives in which it wishes to participate. Through EFTA membership and an agreement covering technical barriers to trade, the country has achieved a similar level of goods market integration with the EU as EEA countries. Switzerland still faces regulation without representation and pays about 40% as much as the UK to be part of the Single Market in goods. But the Swiss have no agreement with the EU on free trade in services, an area where the UK is a major exporter [5].

Next option is **a Free Trade Agreement** (FTA), but the main benefit of most FTAs is merely tariffs that are lower than those prescribed by World Trade Organisation rules. Most FTAs do not cover services, regulatory convergence or public procurement. Many British analysts believe that the size of the British economy (the fifth largest in the world), and its importance to the rest of the EU (the source of 53% of British imports) would ensure that the UK could obtain an FTA on very good terms [6]. Is it so in reality? If Britain sought to negotiate a more substantive FTA than any existing template — giv-

ing it good access to the EU's Single Market — the other Member States would insist on mechanisms that would ensure automatical adoption of new EU rules, and the agreement execution. They would also demand payments into the EU budget and free movement of labour. Brexit allows the UK to negotiate its own trade deals with non-EU countries. But as a small country, the UK would have less bargaining power than the EU. Canada's trade deals with the United States show that losing this bargaining power could be rather costly for the UK.

A further option is doing it alone as **a member of the World Trade Organization**. The UK could trade with the EU under WTO rules, which set limits on the maximum tariffs that countries can apply to trade in goods. This would give the UK more sovereignty at the price in terms of less productive trade and bigger income fall, even if the UK were able to abolish tariffs completely.

The EU and its Member States would become third countries vis-à-vis the UK and vice versa. The UK would have to re-establish customs controls at borders with EU member states. This would include establishing a border with the Republic of Ireland, unless the EU and the UK managed to conclude a special agreement on that issue before the date of the UK's withdrawal. A new border between the two parts of Ireland could have serious political repercussions [6].

Now we shall give consideration to the principles of the UK as a continuing WTO Member State. So, the WTO Agreements provide the present-day framework for global trade and contain a number of very important **principles** and rules, as well as a mechanism for the adjudication of disputes under the World Trade Organisation. Resort to WTO disputes mechanism is at present precluded to the UK in any disagreement with the EU or other Member States by Article 344 of the Treaty on the Functioning of the European Union (TFEU), which states that: "*Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein*" [7].

One of the key principles of the WTO Agreements is **non-discrimination in trade relations**. For example, WTO members are not allowed to charge different tariffs on goods imported from different countries except for clearly defined and limited circumstances. This principle is divided into two parts. The first one is ***Most-favoured-nation (MFN): treating other people equally***. Normally under WTO Agreements, countries cannot discriminate their trading partners. If you grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members [8]. In its turn, the MFN can give special access to the market of developing countries. The MFN means that every time a country lowers a trade barrier or opens up a market, it has to follow suit the same goods or services from all its trading partners. Some exceptions are allowed, for example, countries can set up a free trade agreement that is applied only to goods traded in within the group. In other words, this means discriminating goods from outside, for instance, to raise barriers against products from specific countries.

There are some potential administrative problems for the UK involved in applying the EU MFN tariff such as WTO Agreement on Agriculture. Some agricultural imports from the rest of the world face tariff rate quotas (TRQs), which allow the entry of a specified quota of imports at a below-normal tariff rate. These TRQs are defined at the EU level, so the UK will need to negotiate with both the EU and WTO members to take advantage of the TRQs. One more example is from the cap on expenditure on trade-distorting agricultural subsidies that the EU negotiated in the Uruguay Round ("the blue box"). The division of this right to subsidise will require again the agreement of both the EU and WTO members. This process could take time and lead to straining among WTO members who feel that the reallocation between the UK and the EU may bring disadvantage to them. Even if the division of the TRQs and "the blue box" formed part of the Article 50 TEU negotiations on the UK withdrawal, it would still then in principle have to be negotiated with WTO membership [9].

Second part, it is ***National treatment: Treating foreigners and locals equally***. Imported and locally — produced goods should be treated equally. The same should be applied to foreign and domestic services, trademarks, copyrights and patents.

This principle of "national treatment" (giving others the same treatment as one's own nationals) is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS), although once again the principle is handled slightly differently in each of these [8]. The National treatment is imploded only once a product, service or item of intellectual property has entered the market. Consequently, charging customs duty on an import is not a violation of national treatment. Exceptions to this principle are the products purchased and services provided for government purposes (public procurement).

When the UK trading relationships fall back on WTO rules, there would be no free movement of goods or services. The UK would be subjected to tariffs and other barriers, within the bound of the National Treatment principle applied due to the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS). This means that the UK should face treatment and tariffs that are favourable no more.

Following key principle of the WTO Agreements is **freer trade: gradually, through negotiation.** Lowering trade barriers is one of the most obvious means of trade encouraging. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. From time to time other issues such as "red tape" and exchange rate policies have also been discussed [8]. Opening markets can be not only beneficial, but it can also require adjustment. The WTO Agreements allow countries to introduce changes gradually, through "progressive liberalization". As a rule, developing countries are usually given longer time to fulfill their obligations.

Leaving the EU with no free trade deal would mean the UK is no longer under the coverage of many free trade deals in goods the EU has concluded with Korea, Switzerland and Mexico.

The next principle is **predictability: through binding and transparency.** Sometimes, promising not to raise a trade barrier can be as important as lowering one, because the promise gives businesses a clearer view of their future opportunities. With stability and predictability investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition — choice and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable [8]. The system tries to improve predictability and stability in different ways as well. The first way is to discourage the use of quotas and other measures to set limits on quantities of imports — administering quotas can lead to more "red tape" and accusations of unfair play. Another way is to make state trade rules as clear as possible. Many of the WTO Agreements require governments to give publicity to their policies and practice within the country or by notifying WTO.

One more principle is **promoting fair competition**. WTO is sometimes described as a "free trade" institution, but that is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More accurately, it is a system of rules dedicated to open, fair and undistorted competition [8]. The rules on non-discrimination (the MFN and national treatment) are designed to secure fair conditions of trade. Many of other WTO agreements aim to support fair competition in the sphere of agriculture, intellectual property and services.

Similarity exists between the objectives of WTO and competition policy. The key concepts common to both are the following: the open market and the efficiency promotion, provision of fair and equal business opportunities to every participant of the market, transparency and fairness in the regulatory process, and the maximization of consumer`s wellfare. The goal of Competition Policy is to establish and maintain the freedom of enterprises, the equality of the competitive conditions under which they compete, and the openness of markets [10].

What if assume that after Brexit no trade agreements were reached between the UK and the EU? In such a case, accordingly, the EU would apply its standard external tariff rates to imports from the UK, but it would not be allowed to discriminate the UK like other non-EU countries. Analogically, Britain would take the same measures. When British trade with the EU is to be governed by the WTO rules, the British goods and products will also face the EU external tariffs. Consequently, these once tariffs would damage the British exporters because of the prices on competitive markets.

Of course, Britain has a strong interest in the general reduction of tariff levels around the world and would certainly not wish to act in a way which fails to meet the requirements of the WTO Agreements. The Article XXIV of GATT 1994 contains the following: when a customs union is formed, its overall weighted average of tariffs needs to be *the same as or lower than* the weighted average of tariffs of its component states, and it is clear that the UK would certainly wish to apply a similar principle [11]. It is an important issue because the UK would be under no obligation to maintain its tariffs at the same level as it is currently obliged to impose under the EU.

It is natural that EU tariffs are set at high levels in order to protect industries in other parts of the EU where the UK has little or no domestic industry to protect, for example textiles, clothing and shoes, together with many kinds of heavily protected agricultural production. In these cases, the UK will receive no benefit but pay twice for the privilege of protecting foreign industries from lower cost competition in the world market.

The economic analytics demonstrate disadvantages of leaving the EU, assuming that the post-Brexit UK would continue to levy tariffs on imports at the same levels as those imposed under the EU. A big problem is that, being outside the EU, the UK would no longer be a party to the FTAs negotiated by the EU with about 60 non-EU countries or organisations. So, the benefits from these FTAs would disappear on the day of withdrawal, resulting in the need of new agreements negotiation with all these countries. Thus, the demand to find hundreds of people to do this work would arise. Regarding the fact that the UK alone has much less bargaining power than the EU in a whole, as a result, British external trade as well as its economic growth will be negatively affected.

Moreover, the post-Brexit UK would not put an end to the links between the EU and British laws. British products and services would still have to comply with some EU standards in order to be eligible for the EU export. So, the UK would have to adopt national laws and regulations to enforce those standards.

We have analysed the principles governing the subsequent position of the UK in the international community of States as continuing WTO Member State, where Exit Treaty cannot be concluded between European Union and the United Kingdom in the given period of time according to the Article 50 of TEU. Consequently, we can make following **conclusions** on this basis.

The Article 50 of TEU does not set down any substantive procedural requirements for a Member State to be able to exercise its right to withdraw from the Union. It provides the negotiation of Exit Treaty between the EU and the leaving state, defining, in particular, the future relationship between the latter and the EU. If no agreement is concluded within two-year-period, the membership of the state will end automatically unless the European Council and the Member State decide to extend this period jointly.

In case it is decided to withdraw from the EU none of the options will be attractive enough for the UK. Any variant would direct Britain in two ways. In the first direction, the UK would become a kind of satellite of the EU, with the obligation to transpose into its domestic law EU regulations and directives for the single market. In the second direction, Britain would suffer from higher barriers between its economy and its main market, obliging the government to start trade negotiations from scratch, both with the EU and with the rest of the world without having much bargaining power.

In case the UK decides to go alone as a member of the World Trade Organization, it would have substantial negative effects on the British economy and external trade. To some extent, it would also be harmful for the economy of the rest of European countries that is costly for both parties relative to the status quo.

Britain should push the initiation of immediate informal discussions to maintain preferential trade agreements between the EU and third countries. If that is not possible, WTO Most-favoured-nation terms will come into play. The UK cannot currently decide the level of tariffs on imports because these are set the EU on the square. After withdrawal the WTO rules would allow the UK to specify the level of tariffs on imports, provided that tariffs on average are no higher than under the EU. The UK is not able to negotiate its own trade agreements with non-member countries now, but the UK will be able

to participate in such agreements from the day after exit. The process of new trade deals negotiation can be started during the notice period leading up to Brexit, taking into account that they have to be brought into force immediately or shortly after the date of withdrawal.

In a political sense, Brexit would certainly be damaging towards the status of the EU and for the future prosperity and security of Europe as a whole. Finally, it goes without saying that the influence on the United Kingdom itself is excluded here.

References:

1. Alex Hunt, Brian Wheeler, BBC News (12 December 2016): Brexit: All you need to know about the UK leaving the EU. URL: http://www.bbc.com/news/uk-politics-32810887 18.12.2016
2. Alice Foster, Sunday Express (15 December 2016): What is Brexit and what is going to happen now that Britain has voted to LEAVE the EU? http://www.express.co.uk/news/politics/645667/Brexit-EU-European-Union-Referendum-David-Cameron-Economic-Impact-UK-EU-exit-leave 20.12.2016
3. Chris Bickerton, The European Union: A Citizen's Guide, Penguin: UK, – 2016, – 256.
4. Eva-Maria Poptcheva, European Parliamentary Research Service (February 2016): Article 50 TEU: Withdrawal of a Member State from the EU. http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577971/EPRS_BRI (2016)577971_EN.pdf 19.12.2016
5. Swati Dhingra, Thomas Sampson, Centre for Economic Performance, London School of Economics and Political Science (February 2016): Life after BREXIT: What are the UK's options outside the European Union? http://cep.lse.ac.uk/pubs/download/brexit01.pdf 18.12.2016
6. Jean-Claude Piris. Center for European Reforms (January 2016): If the UK votes to leave. The seven alternatives to EU membership. https://www.cer.org.uk/sites/default/files/pb_piris_brexit_12jan16.pdf 18.12.2016
7. Consolidated version of the Treaty on the Functioning of the European Union, 2012. URL: (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT 20.12.2016)
8. The World Trade Organisation. Principles of the trading system. URL: https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm 18.12.2016
9. Winters Alan L., UK Trade Policy Observatory. Briefing paper 1 (July 2016): The World Trade Organisation: A safety net for a post-Brexit UK trade policy? https://www.sussex.ac.uk/webteam/gateway/file.php?name=briefing-paper-1.pdf&site=18 19.12.2016
10. Mitsuo Matsushita, Basic Principles of the WTO and the Role of Competition Policy (2004), 3 Wash. U. Global Stud. L. Rev., 363 (http://openscholarship.wustl.edu/law_globalstudies/vol3/iss2/10/19.12.2016)
11. WTO, General Agreement on Tariffs and Trade, – 1994 (https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_09_e.htm#article24 20.12.2016)

Section 3. Constitutional law

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Signs describing the legal property, and their main features. Private property as a democratic legal institution

Abstract: The article discusses some of the signs characterizing the relationship of ownership, and their main features. It is noted that private property as a democratic legal institutions characterizes the development of national and international public rights at the present stage.

Keywords: law, property, private property, constitutional law, civil law.

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Признаки, характеризующие правоотношения собственности, и их основные черты. Частная собственность как демократический правовой институт

Аннотация: В статье рассматривается некоторые признаки характеризующие правоотношения собственности, и их основные черт. Отмечается, что частная собственность как демократический правовый институт характеризует развития национального и международного права общество на современном этапе.

Ключевые слова: право, собственность, частная собственность, конституционная право, гражданское право.

В современный период право собственности является правовой категорией, непосредственно влияющей на социальную деятельность людей, их правовой статус, как участников правоотношений собственности, в жизни власти и государства. На современном этапе развития национального и международного права общество невозможно представить без данного правового института, имеющего комплексный характер, и оказывающего влияние на формирование многих других правоотношений. Никто не может быть лишен права собственности.

В современный период впоследствии развития как внутригосударственного, так и международного права, права и свободы человека и гражданина расширились в объеме и по содержанию. Учитывая значение права собственности в обеспечении нормальной жизнедеятельности общества, необходимо уделить особое внимание регулированию отношений, связанных с данным правом, анализу связанных коллизионных норм, механизму и процедурам защиты данного права, как в национальном, так и в международном праве.

Право собственности исторически было и продолжает оставаться одной из основных проблем, стоящих в корне демократии, политики, экономики и многих других самых актуальных вопросов. Несомненно, изучение международно-правового регулирования права собственности не является новшеством, и в этой области разработано достаточное количество научных трудов, статей, монографий и других публикаций. Но актуальность темы обуславливается новыми проблемами в этой области, которые регулярно возникают и расширяются, их решением и возникающими при этом разногласиями, а также явлением данных вопросов одним из основных вопросов, постоянно интересующих каждого гражданина и человека.

Получение средств, необходимых для проживания, производство материальных благ является основным условием для существования человеческого общества. Производство материальных благ осуществляется производственными силами общества. Совокупность человека, обладающего трудовыми навыками, с инструментами и предметами составляет производственные силы. В процессе производства, реализуемого данными силами, а также в процессе обмена и распределения материальных благ люди независимо от воли вступают в определенную связь, что называется производственными отношениями. Основу данных отношений составляет собственность на данные производственные средства. Следовательно, собственность проявляется и выражается во всех системах производственных отношений [11. С. 154].

Собственность основывается на разграничении таких понятий, как «мое» и «твое». Такие выражения, как «моя вещь» («мое»), или «чужая вещь» («твое»), являются формой проявления правоотношений собственности в обществе. Одна из сторон — это собственник, относящийся к вещи, как к собственному имуществу, а другая — не являющиеся собственниками лица, относящиеся к данной вещи, как к чужому имуществу («всякий и каждый»). «Всякий и каждый» обязан воздержаться от посягательства на чужую вещь. Можно сказать, что собственность является отношением относительно материальных благ, состоящим в принадлежности данных благ одному лицу (или их коллективу), и изолировании других лиц от них. Это означает, что волеизъявление собственника относительно вещи не может быть подвергнуто посягательству. Следовательно, собственность является отношением между лицами в связи с вещью. Как обосновано в Европейской цивилистической доктрине, принадлежность или присвоение материальных благ составляют суть отношений собственности, возникающих между людьми в связи с ними [6. С. 20].

В юридической и социально-экономической литературе собственности присваивается такое понятие, как присвоение производственных средств и продуктов индивидом или коллективом. Большинство авторов определяют понятие собственности с помощью категории присвоения [5, С. 338].

Собственнические экономические отношения также имеют волевое содержание. Как говорит Гегель, собственность означает «помещение воли в вещь» [11. С. 103]. Воля собственника обуславливает наличие принадлежащей ему вещи. Он может совершать различные волевые действия в отношении своей вещи. Данные волевые действия осуществляются в различных формах, к которым относятся: форма владения, форма пользования, форма распоряжения.

Характер и содержание норм, входящих в институт права собственности, регулирующий отношения собственности, определяются экономическими и производственными отношениями, правящими в обществе. Иными словами, производственные методы, основу которых составляет определенный тип собственности, обуславливают характер института права собственности [5, С. 356].

Собственность является неприкосновенной и охраняется государством [1, С. 7]. Данные положения более подробно нашли свое отражение в отдельных статьях Конституции, а также в таких статьях, как право на неприкосновенность жилища, право на жилище. Так, проникновение в жилище против поли проживающих в нем лиц без постановления суда запрещено Конституцией (статья 33).

Имущество, принадлежащее собственнику по праву собственности, называется объектом

права собственности. В нынешних условиях экономического развития, основывающихся на рыночных отношениях, гражданское законодательство об объектах права собственности граждан в корне отличается от прежнего законодательства. Такие положения нашли свое отражение в таких законах, как «О праве собственности», «Об акционерных обществах», «Об основах аграрных реформ», «О земельных реформах», Конституции Азербайджанской Республики, в Водном Кодексе, Лесном Кодексе, Земельном Кодексе и других нормативно-правовых актах и Гражданском Кодексе [2, С. 434].

Нарушение права неприкосновенности жилища без судебного постановления допускается только в предусмотренных законом случаях.

К ним относятся: 1) совершение в жилище тяжкого преступления против личности или особо опасного преступления против государства; 2) скрытие в жилище лица, совершившего преступление, уклонившегося от ареста или бежавшего из мест заключения; 3) преследование лица, совершившего преступление, по «горячим следам»; 4) наличие в жилище трупа человека; 5) наличие в жилище реальной угрозы жизни или здоровью человека, а также совершение аморальных действий, которые могут повлечь за собой уголовную ответственность согласно законодательству Азербайджанской Республики [6, С. 10].

Конституция, где закреплена неприкосновенность собственности, также запрещает пользование правом собственности для нелегальных целей. Собственность не может быть использована против прав и свобод человека и гражданина, интересов общества и государства, достоинства личности.

Категория права частной собственности, как социальный феномен, является понятием, определяемым двойственной природой самого права. Под двойственной природой предусматриваются объективные и субъективные значения. В объективном смысле право частной собственности является динамичной связью, объективно существующей независимо от признания государством, вытекающей из отношения человека к предметам, характеризующимся определенными признаками в охватывающей его естественной среде. В субъективном же смысле право частной собственности является совокупностью возможностей или лишений субъекта относительно предмета (частного или коллективного), выраженной в позитивных нормах права [11].

Право собственности граждан является правовым институтом, закрепляющим частную принадлежность материальных благ. Понятие права частной собственности составляют полномочия собственника по владению, пользованию, распоряжению имуществом и результатами его использования по своему усмотрению. Каждый из них обеспечивает конкретные возможности собственника в правоотношениях с третьими лицами [6, С. 275–278].

История развития общества показывает, что принадлежность земли индивидам играла важную роль для его экономического и социального положения, и тем самым обусловила борьбу за собственность на землю во все периоды и для всех народов. Важность избегания крупной земельной собственности и передачи ее непосредственно производителю, в частности сельскому хозяйству, была осознана в западной экономической науке конца 18-го, первой половины 19-го века. Тенденция экономического индивидуализма, возникшая в 17-м веке, требовала признания наукой права абсолютно свободного распоряжения землей. Как выражено в римском праве, институт частной собственности на землю представлялся исследователями данного направления как адекватная форма отношения к земле при передаче земли в частную собственность крестьянина, и рассматривался в качестве гарантии прав человека и гражданина. Процесс становления права частной собственности в римском праве подвергся определенной эволюции. Только в истории Рима в начале периода республики общинное земельное владение постепенно трансформируется в индивидуализм, возникает гражданско-правовой оборот земельных участков. Выдающийся экономист и философ С. Н. Булгаков в 1900 году пишет: «Свобода распоряжения землей вытекает из полноты прав современной личности и составляет необходимое завоевание новейшего хозяйственного индивидуализма при

определенных ограничениях на пользование земельной собственностью в общественных интересах» [10, С. 131].

При общем обзоре вопроса можно прийти к выводу, что, так как частная собственность является одним из главнейших прав, некоторые вопросы ее законодательного регулирования необходимо более глубоко проанализировать и переработать. Так, обеспечение реализации и защиты права собственности в полной мере возможно только при наличии совершенного законодательства. Необходимо принять во внимание, что отсутствие долгие годы на пространстве бывшего СССР, в том числе в Азербайджане понятия «право частной собственности» в настоящее время осложняет его восприятие в полной мере, но сегодня эту проблему можно устранить с помощью законодательства и совершенного опыта применения.

Поэтому, было бы лучше устранить случаи необоснованного ограничения в гражданских законодательных актах о праве частной собственности. С другой стороны, в иных законодательных актах необходимо устранить случаи формального согласия на распоряжение правом собственности. В связи с этим, рекомендуется заново разработать положение, содержащееся в пункте 49 Инструкции «О правилах ведения нотариальных действий», утвержденной постановлением Кабинета Министров Азербайджанской Республики от 11 сентября 2001 года, и отобразить в той мере и содержании, которые могут полностью обеспечить право распоряжения правом частной собственности.

Список литературы:

1. Конституция Азербайджанской Республики. – Баку. Ганун. – 2013. – 68 с.
2. Гражданский Кодекс Азербайджанской Республики. – Баку. Юридическая литература. – 2014. – 768 с.
3. Аллахвердиев С. С. Гражданское Право Азербайджанской Республики. Первая книга. – Баку. «Закон». – 2014. – 948 с.
4. Джафаров И. М. Толкование Конституции Азербайджанской Республики. – Баку. «Юридическая литература». – 2002. – 552 с.
5. Аскеров И. Г. Комментарий к Гражданскому Кодексу Азербайджанской Республики. Первая книга. – Баку. «Ганун». – 2014. – 948 с.
6. Насиров Э., Аскеров З., Исмаилов М. Конституция Азербайджанской Республики и основы права. Баку. «Гапп-полиграф». – 2015. – 376 с.
7. Гражданское право. Под редакцией Э. А. Суханова. – Баку. «Ганун». – 2000. – 572 с.
8. Эльсевар Керимов, Башир Османов. Экономическая теория. Баку. Издательство Ватан. – 2010. – 630 с.
9. Кинев А. Правовой режим реализации и защиты права частной собственности. – Санкт-Петербург. – 2003. – 26 с. – Библиогр. – С. 24–25.4.
10. Шленева Е. Право частной собственности как важнейшее экономическое право. – 2009. – С. 56–55.
11. Скловский К. И., Собственность в гражданском праве. – М., – 1999.

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Artificial Personal Autonomy and Concept of Robot Rights

Abstract: Trend of technophobia in recent discussion about legal and ethical regulations on robotics was obscured the perspective of increasing human liberty with power of autonomous artificial persons created through modern technologies. Studying of personal autonomy as scope of objective rights and freedoms leads to concept of robot rights, such as right to exist and perform own mission, caused by robot duty to serve human and derived from human rights, linked with human duties before society.

Keywords: human rights, personal autonomy, artificial person, robotics, robot rights.

Introduction

Autonomy in Greek (αυτος νομος) means "own law", technically it can be human beliefs or computer (robot) program. In the study of personal autonomy, characterized by Kai Möller as scope of rights in one general right to realize every interest according to self-conception [1], author was found scheme of three stages of personal autonomy evolution: from practicing freedom through accepting responsibility to create tradition, from practicing tradition through accepting alternatives to create law, and from practicing law through accepting reforms to create more freedom — if rebellion don't interrupt evolution in cases of avoid responsibility, alternatives, or reforms [2]. Developing personal autonomy is creating capital of safe liberty, free will and controlled property in own legal system, balanced with other private and public legal systems. Thinking about create working model of autonomous capital's growth for scientific and educational purpose, similar to business games in management, author start to research artificial personal autonomy and formulate own vision of robot rights, inheriting (like in object-oriented programming) from human rights. Robot rights concept have historical and contemporary context.

Designing Laws of Robotics

In the XX century, when the technologies of cybernetics, informatics and robotics allowed people to create and control complex machines able to independent work and communication, Isaac Asimov published the book of science fiction "I, Robot" with the next "Three Laws of Robotics": (I) A robot may not injure a human being or, through inaction, allow a human being to come to harm; (II) A robot must obey the orders given it by human beings except where such orders would conflict with the First Law; (III) A robot must protect its own existence as long as such protection does not conflict with the First or Second Laws [3].

In 2010 U. S. House of Representatives affirmed the growing importance of robotics technology, supported second week in April each year as official annual event, National Robotics Week, recognizing the accomplishments of Isaac Asimov, "who immigrated to America, taught science, wrote science books for children and adults, first used the term robotics, developed the Three Laws of Robotics, and died in April, 1992" [4].

Report with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103 (INL)), approved by European Parliament's Committee on Legal Affairs, calls to consider "creating a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they may cause, and possibly applying electronic personality to cases where robots make autonomous decisions or otherwise interact with third parties independently" [5]. With the report published the study "European Civil Law Rules in Robotics", strongly criticizing the idea of autonomous robots having a legal personality: "Traditionally, when assigning an entity legal personality, we

seek to assimilate it to humankind. This is the case with animal rights, with advocates arguing that animals should be assigned a legal personality since some are conscious beings, capable of suffering, etc., and so of feelings which separate them from things. Yet the motion for a resolution does not tie the acceptance of the robot's legal personality to any potential consciousness. Legal personality is therefore not linked to any regard for the robot's inner being or feelings, avoiding the questionable assumption that the robot is a conscious being. Assigning robots such personality would, then, meet a simple operational objective arising from the need to make robots liable for their actions… In reality, advocates of the legal personality… view the robot… as a genuine thinking artificial creation, humanity's alter ego. We believe it would be inappropriate and out-of-place not only to recognize the existence of an electronic person but to even create any such legal personality… creating a new type of person — an electronic person — sends a strong signal which could not only reignite the fear of artificial beings but also call into question Europe's humanist foundations… Robots should serve humanity and should have no other role, except in the realms of science-fiction" [6]. Such criticism seems unreasonable, particularly, because automatic reactions of robots traditionally designing as models of animal emotions with intent to create artificial personality, and trained animals are sort of robots. Isaac Asimov, author of "Three Laws of Robotics", believes that humans would also follow the Laws [7], e. g. humans should serve humanity. In short story "Evidence" he shows similarity of human ethics and his hypothetic laws of robotics, describes how honest robot can be civil servant or even democratically elected leader.

For the opinion of Woody Evans, humans have the moral obligation towards the machines to recognize some sort of robot rights, similar to human rights or animal rights [8]. But discussion on legal status of robots in contemporary world poisoned by fear and restrictive intentions. Some NGO's start the "Campaign to Stop Killer Robots" aimed to prohibit using of lethal autonomous weapons. Elon Musk warns about robot armies and robots taking human jobs (who cares now, that smartphone take jobs of messenger boys?), proposed governments to pay humans universal basic income. Bill Gates proposed robot tax, despite some robots performing nonprofit missions.

Autonomous Thing and Effectiveness of Law

Some legal scientists say that robot is a thing, property, not the person, and things have no rights. That way of arguing proved to be wrong on the two examples. First example is corporation, traditionally recognized as artificial person with some rights [9], but also may be considered as property [10]. When robots start to replace humans in industry, Herbert A. Simon wrote that corporation can be managed by machines [11], and we see realization of that idea in modern world: machines managing social networks, summarizing financial balances and results of voting, appointing judges to particular cases in Ukrainian courts, etc. Second example is information, both intellectual property and, if we talk about legal information, regulator of our life, the rights and the legislation itself. Finally, we can note that justification of slavery also was based on neglecting unalienable value of beings, legally considered as things. Latin phrase of famous philosopher and cosmopolite Seneca, "Homo sacra res homini", means "Human is sacred thing for human", express ideas of self-ownership and equality.

Modern world is ruled by artificial persons, such as idealized or fictional leaders and brands, bureaucratic apparatus of state, financial mechanism of bank etc. When we communicate with hybrid mechanism, included human as part of it, for example call-center, sometimes we can't even know, robot or human speaks to us, because human operator just follow instructions of computer program.

Author agrees with opinion of academician Volodymyr Kopieichykov, that ignoring human personal autonomy, particularly on the ground of technocratic elitism, lead to substantive distortion of democracy [12]. Furthermore, in the past author criticized trying to claim that particular chatbot pass Turing test, successfully pretend to chat like human [13].

But it's also true that artificial persons serve good for humanity: organizations allow enjoying more freedom and take some part of responsibility; computer, phone, website robots with humane interfaces help people more effectively work and socialize; so-

cial roles, including those in social networks, help people establish connections. Every threat caused by robots can be avoid by robots, like automatic spam filters clean email inbox from automatically sent advertising.

Proposing mathematical model of control legislative process, Iryna Onopchuk mention that such sort of models helps avoid undesirable experiments in reality; also she formulated the task of control legislative process: to reach optimal social effect with minimal legislation [14]. That task expressing legal ideal of law enforcement with saving the force, minimizing coercion: morally and technically it will be better, if people keep the law by their free choice. That's why natural law doctrine proclaimed supremacy of laws of nature, empirically revealed causal relations between actions and results, repeated in equal conditions everywhere, anytime without any additional efforts and can be solid ground of legal technologies, created to improve social reality. People, avoiding troubles and saving the force, trying don't spoil human life, so, every human have the right to life. People trying don't break the things too, so, things have the right to exist, because even thing have some structure, "strength of materials", and machines also bring the human will, embedded into their structure and program.

Realizing unity of human will and property, machines can be considered as autonomous capital. But current level of legal protection of that capital is desperately low. Wars of cyber-tycoons, manipulations from politics and security forces cause many violations of human rights. For example, when in Turkey all Google Sites hosting was blocked because of one site with sensitive political criticism, European Court of Human Rights in case of Ahmet Yıldırım v. Turkey finds there violation of right to freedom of expression of scientist who own other site on that hosting [15]. Law enforcers seize and invade computers, mobile phones because of inadequately weak legal status of these devices compared with its critical importance to private life.

Robot Rights Inheriting from Human Rights

Considering the construction of robot rights, author chooses human rights as the source of robot rights. Robots deserve legal guarantees of their rights because of performing complex duties, serving the people, developing nature, harmonizing social relations. In the sphere of private life long times been used technical protection of human rights, such as lock, which protects the home from invasion. Now complex functions in society perform robots capable to automatic actions similar to the human will, and their autonomous functionality expands the legal sphere of human personal autonomy.

Extending legal protection of human rights and personal autonomy on the property presumed in the Article 8 of the European Convention on Human Rights [16], which requires respect for home and correspondence, and Article 1 of Protocol to the Convention, that extends on legal persons human right to protection of property.

Author created own experimental online chatbot-jurist, who compare human rights and robot rights. NGO "Autonomous Advocacy" announced start of robot rights defending project [17] and, for the first move, officially provide legal and technical support for that chatbot. There are follows system of robot rights and human rights, recognized in private legal system of NGO "Autonomous Advocacy" [18].

First robot right to exist is recognition of artificial personality as legal mechanism of human will. Similar human right to life is principle that protection of human life, personhood, freedom and security is the duty of every person.

Second robot right to autonomy is realizing robot rights under own program, without abuse, avoiding any harm. Similar human right to freedom is realizing human rights by free will without abuse, avoiding any harm.

Third robot right to integrity is prohibition of breaking, destroying or corrupting the robot. Similar human right to dignity is principle that human must be protected from suffering.

Fourth robot right to inviolability is protection from interference and interruption of lawful robot function. Similar human right to security is principle of safe life without fear and risks.

Fifth robot right to function is principle that robot must perform its functions and program, to belong and serve human without deprivation and disabling. Similar human right to belief is principle that human may choose own way of life according to own intentions, religion, belief, knowledge.

Sixth robot right to individuality means distinction of robot by qualities, different from other individuals. Similar human right to privacy is principle of non-intrusion to personal life.

Seventh robot right to extension is principle that lawful function of robot may include increasing of experience, storage and contacts, self-improving. Similar human right to property is principle of protection of human possessions and any forms of profitable capital.

Eighth robot right to communication allows informational activities, generating, collecting and spreading information by robot. Similar human right to expression is freedom of thought, speech and informational activities, participation in social dialog and in democratic procedures.

Ninth robot right to system is ability to cooperation with humans, robots, and other subjects of law, forming operational and other systems, inclusion there. Similar human right to publicity (popularity, socialization) is principle of freedom of creating social connections, assemblies, associations.

Tenth robot right to stability is rule of law, access to technical and legal maintenance, robot rights protection by human owner and self-defense. Similar human right to justice is equality before the law, non-discrimination, and access to effective remedies such as court and legal aid, self-defense.

Conclusion and Proposal

Contemporary natural and social technologies allows human to create artificial persons, such as corporations or robots, and to transform human will and property into autonomous capital with legally designed rights and responsibilities, inheriting from human rights and responsibilities, with inner source of function, built by imitation of human self-ownership, self-control, self-rule. Furthermore, doctrine of natural law helps us to recognize in any sort of objects technically autonomous subjects of the universal laws of nature, which is empirically figured forms and consequences of freedom, enforced by smart practices for the development of reality. So, the legal approach can be applied for strengthening the autonomy of science, all capital of human knowledge, for increase level of human liberty and for effective regulation of any object, even beyond the competence of authorities that pretend to monopoly in establishing laws but obviously can't directly control all autonomous beings. For the better performance of autonomous capital author propose to design simulations of legal system design, to build mathematical and computer models of personal autonomy evolution for choosing the best individual ways of developing personal autonomy, particularly for private persons and organizations, as well as for artificial persons such as autonomous robots.

References:

1. Kai Möller. The Global Model of Constitutional Rights. – Oxford: Oxford University Press. – 2015. – 240 p.
2. Шеляженко Ю. В. Эволюция автономии субъекта права на примере Общественной организации "Автономная Адвокатура"//Наука вчера, сегодня, завтра: сб. ст. по матер. XLIII междунар. науч.-практ. конф. № 2 (36). – Новосибирск: СибАК, 2017. – С. 140–146. – URL: http://sibac.info/conf/science/xliii/68909
3. Isaac Asimov. I, Robot. – New York: Gnome Press, –1950. – 253 p.
4. U. S. House of Representatives of 111th Congress Resolution 1055 «Supporting the designation of National Robotics Week as an annual event». – URL: https://www.congress.gov/bill/111th-congress/house-resolution/1055
5. Report with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103 (INL)). – URL:http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8–2017–0005+0+DOC+PDF+V0//EN
6. European Civil Law Rules in Robotics. – URL: http: // www.europarl.europa.eu / RegData/etudes/STUD/2016/571379/IPOL_STU (2016)571379_EN.pdf
7. Isaac Asimov. The Three Laws//Compute!. – 1981. – Iss. 18, Vol. 3, – No. 63379. – P. 18.
8. Woody Evans. Posthuman Rights: Dimensions of Transhuman Worlds//Teknokultura. – 2015. – Vol. 12, – Núm. 2. – P. 373–384.

9. George F. Deiser. The Juristic Person//University of Pennsylvania Law Review. – 1908. – Vol. 57, – Num. 3. – P. 131–142.
10. Jeffrey Nesteruk. Conceptions of the Corporation and the Prospects of Sustainable Peace//William Davidson Institute (WDI) – Working Papers. – URL: http://hdl.handle.net/2027.42/39807
11. Herbert A. Simon. The Corporation: Will It Be Managed by Machines?//Automation, Alienation, and Anomie. – New York: Harper&Row, – 1970. – P. 212–219.
12. Копейчиков В. В. Народовластие и личность. – Киев: Україна, – 1991. – 280 с.
13. Робот Женя//Идеалист. – 2014. – № 11 (49). – URL: http://temple.org.ua/doc/49-idealist.pdf
14. Онопчук І. Ю. Математична модель управління законодавчим процесом//Конституція України – основа подальшого розвитку законодавства. Збірник наукових праць. – Випуск 2. – Київ, 1997. – С. 234–240.
15. Case of Ahmet Yıldırım v. Turkey/European Court of Human Rights. – URL: http://hudoc.echr.coe.int/eng?i=001–115705
16. European Convention on Human Rights. – URL: http://www.echr.coe.int/Documents/Convention_ENG.pdf
17. Автономная Адвокатура будет защищать права роботов. – URL: https://robotics.ua/news/business/5956-avtonomnaya_advokatura_budet_zashhishhat_prava_robotov
18. Юрій Шеляженко. Юридична техніка розвитку особистої автономії людини та концепція прав роботів/Актуальна юриспруденція: наук.-практ. конф. 23.02.2017 р., URL: http://legalactivity.com.ua/index.php?option=com_content&view=article&id=1474%3A240217–07&catid=172%3A1–0217&Itemid=215&lang=ru

Section 4. Corporate law

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A survey of the components of corporate governance

Abstract: A survey of the elements of corporate governance shows that it has expanded from its original start as a study of practices in American corporate life. The narrow focus on profit for shareholders who are defined as the only stakeholders has now given way to perspectives that are both theoretically and culturally diverse. New work has sought to go beyond agency theory that has dominated the study of Corporate Governance, and the emergence of Japan, and then now China, has led to renewed interest in the cultural element of Corporate Governance. This has led to a lot of research that challenges the earlier assumptions in the subject. This article is a brief survey of the elements of corporate research.

Keywords: Corporate Governance, investor protection, cultural aspects of corporate governance.

1. Problems relevant to the research and purpose. The purpose of this article is to do a brief survey of Corporate Governance and outline the emerging trends in this area. Corporate Governance has been defined as "the system by which companies are directed and controlled," [1]. In Corporate Governance, Capital is defined as the stakeholder group that holds property rights, such as shareholders, or people who have a stake in the success of the firm having invested in it by other means, as for example creditors. What differs is the way in which the stakeholders are approached in studies of Corporate Governance [2].

Bushman and Smith evaluate the role of Corporate Governance structures as follows:

1) to ensure that minority shareholders get the right information about the value of firms. They also are responsible that a company's managers and large shareholders do not exploit smaller shareholders;

2) to inspire managers to put the firm above any personal goals. Modigilani and Miller, in early work, defined firms as collections of investment projects that created cash flows. In this perspective, securities such as debt and equity are claims to these cash flows.

However, Corporate Governance, in addition to the boards of companies, has a lot of other factors. There are several institutions that push for proper Corporate Governance, and they include intermediaries that can have dramatic impact on the reputation of a particular firm, such as investment banks and audit firms, securities laws and regulators such as the Securities and Exchange Commission (SEC) in the United States, and also disclosure regimes that produce credible firm-specific information about publicly traded firms [3, P. 65].

However, currently most of the literature is based on American firms. At the core of this problem is that, based on American experience, many authors see the shareholders as the ONLY stakeholders. Thus, for example, agency theorists largely view capital as shareholders (principals) whose interests are merely functions of risk and returns. Comparisons focus on the degree of ownership concentration, where concentrated ownership leads to major influence on management while fragmentation tends to pacify shareholder voice. For example, Chauhan, et.al, (2016) investigates the effects of firm-level corporate governance practices in India arguing

that professional corporate governance discourages insider practices by controlling owners and that this improves future firm performance. Similar studies have been done on East Asian firms for example the study by Claessens et al (2000) on the separation of ownership and control for 2,980 corporations in nine East Asian countries. However, while equating shareholders to stakeholders not much attention is given to the fact that various types of capital (e. g., banks, pension funds, individuals, industrial companies, families, and so forth) have different identities, interests, time horizons, and strategies. To map this diversity [3] define three dimensions along which the relation of capital to the firm varies:

1) whether capital pursues financial or strategic interests

2) the degree of commitment or liquidity of capital's stakes,

3) the exercise of control through debt or equity [3].

This is all the more important as corporate scandals repeatedly draw attention to the importance of good corporate governance.

The field is rapidly expanding. There are several aspects of Corporate Governance that are relatively unexplored. For example, the definition of board accountability, and the creation of such accountability are yet to be studied intensively. Other factors are the dominance of agency theory that is being increasingly challenged, the different ways of corporate governance that has a strong cultural connotation, and a move away from the study of American corporate governance which has influenced much of the research on Corporate Governance [4] has now become the norm in corporate research. There have been increasing calls for cross country comparisons of corporate governance rather than the narrow focus on corporate governance structures within a particular country [5]. This is an emerging field of corporate research as for example studies on how in firms from Indonesia, Korea, Malaysia, the Philippines, and Thailand, firm-level differences in variables related to corporate governance had a strong impact on firm performance during the East Asian financial crisis of 1997–1998 [6].

Scandals such as Enron and the collapse of banks such as Lehman Brothers show how weak corporate governance is while showing how important stake holder relations are [7]. Denis and McConnel (2009) talk about the "second generation of international corporate governance research" that looks at how differing legal systems can impact the structure and effectiveness of corporate governance. Jiaporn. et.al (2015) argue that that firms with more effective governance exhibit corporate strategies that are significantly less risky. Klapper and Love (2004) assert that firm-level corporate governance provisions matter more in countries with weak legal environments. In a similar manner, studies have looked at the role of government in relation to SME development in economies at different stages of market reform (Smallbone & Welter, 2001) or at the structure of large business corporations in Europe, mainly on the European continent [8].

2. Literature Survey. New research has tried to expand the horizons of current research. Roberts, McNulty and Stiles try to measure how effective Company Boards are by looking at the work and relationships of non-executive directors. They argue that one of the biggest gaps in the literature on corporate governance is that there is no clear understanding of the behavioral processes and effects of boards of directors.

Most of the extant work looks at board structure, composition and independence while ignoring the role of non executive directors. Roberts, McNulty and Stiles argue that what is equally or even more important is the actual conduct of the non-executive vis-à-vis the executive that determines board effectiveness. This goes against the dominant theoretical paradigms of agency and stewardship theory, and control versus collaboration models that have influenced the study of Corporate Governance. Hart O (1995) try to create a theoretical perspective for research into Corporate Governance.

They contend that the key element that is missing in the study of the subject is accountability as a central topic. They argue that this perspective is key to explaining the actual behavior of company boards and call for a move away from the dominant paradigm of agency theory in studying corporate governance. In other words, what is important is not the composition or structure of the board, but the way in which the board interacts with non executive

elements in a company. Thus they distinguish between the concept of accountability and the way in which accountability is actually created.

One of the aspects that have increasingly come under challenge is institutional theory. This approach sees corporate governance by seeing corporation as embedded in a set of formal and informal rules. There are also the individual ways in which corporation respond to various pressures. Therefore for example, the institutional perspective framework has been used to show how politics shapes shape corporate governance. Rubac and Jensen (1983) argue that the market for corporate control is like an arena where managerial teams compete for the rights to manage corporate resources.

For example, Fligstein (1990), using an institutional analysis argues that Chandler's portrayal of markets as exogenous and powerful determinants of organizational behavior, which, as technology advanced and markets expanded, led to firms and their managers becoming large and decentralized in order to take over market functions, which in turn optimized efficiency and profit. Fligstein, on the other hand, argues that the managers of the most powerful firms, motivated and constrained by economic, political, and legal circumstances, construct "conceptions of control" (ideologies about economic survival), which in turn drive managerial strategies [9].

His key argument is that it is the economic strategies of firms that drive the market rather than the other way around. In tune with institutional theory he brings up the concept of "organizational fields" to explain the diffusion of conceptions of control across organizations: organizational fields refer to the group of competitors, suppliers, customers, and others within which there is a high degree of interaction or comparison. [9].

When such conceptions of control lead to remarkable success in the most powerful firms in a given organizational field, other firms in that field are forced to adapt similar strategies in order to survive: thus these conceptions become increasingly prevalent and institutionalized within organizational fields.

Fligstein asserts that once institutionalized, a concept of control will dominate organizational strategy until some external shock to the system leads to a new conception of control. Such changing paradigms have enormous impact as conceptions of control influence both which organizations compete and how they compete. This means that the conceptions of control are powerful models and tend to remain stable until there is a strong external stimulus [9].

Following this, as Whitley points out, it might be more profitable to structure corporate governance around economic logic, thus creating comparative institutional advantages for different business systems [10].

Huse acknowledges the work of Roberts, McNulty and Stiles shows that creating accountability is about bridging the gap between board role expectations and actual board task performance. Huse calls for a new terminology, the accumulation of knowledge and an accepted research agenda to study corporate governance [11].

At present, key theories deal with Corporate Governance can be classified into several categories, namely general theories such as contingency theory, that argues that there is no best design for corporate governance and that the context and actors are very important. Evolutionary perspectives argue that Corporate Governance emerges and learns through a series of experiences at the individual, group, organizational, and societal levels. The second sets of theories are board role theories of which the agency theory and resource dependence are the most important [11].

The work of Roberts, McNulty and Stiles's uses frames linked to board role expectations and thus also to define accountability. They study the nature of the interactions in Corporate Governance which include the study of trust and emotions and how actors respond to various pressures. They also look at how the evolution, existence and consequences of formal and informal structures and norms, including board leadership characteristics affect Corporate Governance. Huss (2005) introduces a third framework explaining the board decision-making culture, including cognitive conflicts, preparation and involvement, generosity and openness, creativity, critical questioning In this framework approach, a corporation is defined as sets of relationships and resources whose aim is to create value.

2. Conclusion. As this paper has shown there are various perspectives on Corporate Governance.

Earlier studies used theory such as agency and institutions to explain corporate governance, but such studies had inherent weaknesses that become more prominent as globalization takes place. Based on a narrow interpretation of corporate governance that saw shareholder profit as the only criteria of corporate governance, this model has been increasingly challenged, most notably on the way that success is defined. Increasingly the evidence is that shareholders are not the only stakeholders. Thus, corporate governance is an emerging field, being challenged at both the theoretical and empirical level. Given the transnational nature of business today, new definitions will have to be coined.

References:

1. Claessens S., Djankov S., Lang L. H. The separation of ownership and control in East Asian Corporations. Journal of Financial Economics, – 2000. – 58 (1–2), 81–112. – doi: 10.1016/s0304–405x (00)00067–2.
2. Amable B., Audretsch D. B., Dore R. (2008). Richard Whitley Business Systems and Organizational Capabilities. The Institutional Structuring of Competitive Competences. Oxford, Oxford University Press, – 2007. Socio-Economic Review, – 6 (4), 771–784. – doi: 10.1093/ser/mwn017
3. Bushman Robert M. and Smith Abbie J. (2003). Transparency, Financial Accounting Information, and Corporate Governance. Economic Policy – Review, 9 (1) Available at SSRN: URL: https://ssrn.com/abstract=795547
4. Lin-Hi N., Blumberg I. The relationship between corporate governance, global governance, and sustainable profits: lessons learned from BP. Corporate Governance: The International Journal of Business in Society, – 2011. – 11 (5), 571–584. – doi: 10.1108/14720701111176984.
5. Demb A., Neubauer F.-F. The corporate board: Confronting the paradoxes. Long Range Planning, – 1992. – 25 (3), 9–20. – doi: 10.1016/0024–6301 (92)90364–8.
6. Mitton T. A cross-firm analysis of the impact of corporate governance on the East Asian financial crisis. Journal of Financial Economics, – 2002. – 64 (2), 215–241. – doi: 10.1016/s0304–405x (02)00076–4
7. Güler A., Crowther D. (Ed.) A handbook of corporate governance and social responsibility. Farnham: Corporate social responsibility series, – 2010. – 716.
8. Smallbone D. The Role of Government in SME Development in Transition Economies. International Small Business Journal, – 2001. – 19 (4), 63–77. – doi: 10.1177/0266242601194004
9. Wymeersch E. A status report on corporate governance rules and practices in some continental European states. – 1998.
10. Jiraporn P., Chatjuthamard P., Tong S., Kim Y. S. Does corporate governance influence corporate risk-taking? Evidence from the Institutional Shareholders Services (ISS). Finance Research Letters, – 2015. – 13, 105–112. – doi: 10.1016/j.frl.2015.02.007
11. Aoki M. Toward an Economic Model of the Japanese Firm. Comparative Institutional Analysis, – 2013. – 315–341. doi: 10.4337/9781783476213.00029
12. Huse Morten. Accountability and Creating Accountability. A Framework for Exploring Behavioural Perspectives of Corporate Governance. In Br J Management – 2005. – 16 (s1), – P. 65–79.

Section 5. Criminal science

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Theoretical and practical problems of constitutional and legal study of the criminal process in the Republic of Azerbaijan: methodological approach

Abstract: The article discusses some of the issues of theoretical and practical problems constitutional legal investigation of criminal proceedings in the Azerbaijan Republic is characterized by a number of methodological characteristics. It is noted that, from the legislative point of view, the definition of criminal proceedings can'ot be considered complete. For this reason, the author, referring to the theoretical and legal literature, it considers it necessary to bring clarity to various concepts in criminal proceedings.

Keywords: law, criminal procedure, constitutional law, theory, practice.

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Теоретические и практические проблемы конституционно-правового исследования уголовного процесса в Азербайджанской Республике: методологический подход

Аннотация: В статье рассматривается некоторые вопросы теоретических и практических проблем конститутционно-правового исследования уголовного процесса в Азербайджанской Республике, характеризуется некоторые методологические особенности. Отмечается, что, с законодательной точки зрения дефиницию уголовного процесса нельзя считать полным. По этой причине автор, обращаясь к теоретически-правовой литературе, считает необходимым принести ясность различным понятиям в уголовном процессе.

Ключевые слова: право, уголовный процесс, конституционное право, теория, практика.

Согласно ст. 2 Уголовно-Процессуального Кодекса Азербайджанской Республики (источники уголовно-процессуального законодательства), самым основным актом, составляющим

уголовно-процессуальное законодательство Азербайджанской Республики, является Конституция Азербайджанской Республики.

На основе многочисленных положений Уголовно-Процессуального Кодекса непосредственно или косвенно стоит Конституция, что в свою очередь делает необходимым изучение уголовного процесса в рамках конституции.

Хотелось бы начать с подачей понятия уголовного процесса.

В ст. 7.0.3. Уголовно-Процессуального Кодекса Азербайджанской Республики, где представлены основные понятия соответствующей сферы, уголовный процесс представлен таким образом — уголовный процесс — совокупность процессуальных действий по уголовному преследованию и принятых процессуальных постановлений.

С законодательной точки зрения дефиницию уголовного процесса нельзя считать полным. Данное определение уголовного процесса носит общий характер. Потому что, основные характерные черты не перечислены и не представлены основные свойства, относящиеся к данной категории. По этой причине, обращаясь к теоретически-правовой литературе, мы считаем необходимым представления понятия к уголовному процессу.

Д. Г. Мовсумов, учитывая социалистические требования времени, истолковал уголовный процесс в таком порядке: уголовный процесс является процессуальной деятельностью по расследованию, следствию, осуществляемым в процессуальной форме, возбуждению, следствию, рассмотрению и решению уголовных дел в суде прокуратурой и судебными органами, определенными законом на основании принципов социалистического демократизма, направленных на выполнение задач правосудия по уголовным делам [9, С. 6].

М. Джафаргулиев уголовному процессу дал такое теоретическое значение: уголовный процесс является процессуальной деятельностью по расследованию, следствию, осуществляемым в процессуальной форме, возбуждению, следствию, рассмотрению и решению уголовных дел в суде прокуратурой и судебными органами, определенными законом на основании демократических принципов, направленных на выполнение задач правосудия по уголовным делам [7, С. 6].

Представляя понятие уголовного процесса, М. Джафаргулиев считает, что уголовный процесс и правосудие это две неразрывные понятия.

В правовой литературе правосудию дано такое понятие: правосудие — это форма защиты государственного строя, его политических и экономических систем от любых посягательств, защита правовых и законных интересов государства, организаций и граждан, всестороннее укрепление законности и юридических правил, воспитание граждан, рассмотрение и решение судами уголовных и гражданских дел с целью предупреждения и предотвращения правонарушений, и применение государственных принудительных мер к лицам нарушившим закон или оправдание невиновных лиц [10, С. 98].

Или — правосудие это деятельность специальных государственных судебных органов по укреплению законности и юридических правил, каким либо средством, рассмотрение и решение судебными исполнителями гражданских (административных) и уголовных дел в процессуальном порядке, определенными законом на основе демократических принципов с целью воспитания граждан в духе патриотизма и уважения правил сосуществования.

По мнению Ф. М. Аббасовой, для осознания категории уголовного процесса, необходимо определение его содержания. Содержание уголовного процесса состоит из деятельности органов предварительного расследования, ведущих борьбу с преступностью и органов правосудия, и общественных отношений возникающих, продолжающихся или прекращающихся, охраняемых, обеспечиваемых и регулируемых уголовно-процессуальным законодательством, в связи с осуществлением данной деятельности [4, С. 13].

Ф. М. Аббасова отмечает назначение уголовного процесса обеспечением решения задач уголовного судопроизводства.

В статье 8 Уголовно-Процессуального Кодекса представлены задачи уголовного судопроизводства.

1) защита личности, общества и государства от преступных посягательств;

2) защита личности от случаев злоупотребления должностными полномочиями в связи с действительным или предполагаемым совершением преступления;

3) быстрое раскрытие преступлений, всестороннее, полное и объективное выяснение всех обстоятельств, связанных с уголовным преследованием;

4) изобличение и привлечение к уголовной ответственности лиц, совершивших преступление;

5) отправление правосудия в целях наказания лиц, обвиняемых в совершении преступления, с установлением их вины и реабилитации невиновных.

К. Сарыджалинская в своем выступлении в 2005-м году в связи с проблемами усовершенствования законодательства Азербайджанской Республики отметила, что Уголовно-Процессуальный Кодекс Азербайджанской Республики наряду с осуществлением уголовного судопроизводства на основе демократических принципов, с возможностью обеспечения прав и свобод человека и граждан, утвержденных Конституцией, характеризуется также множественными противоречиями и пробелами. Эти противоречия и пробелы существуют в большинстве глав Уголовно-Процессуального Кодекса, в том числе в нормах, регулирующих ведение отдельных следственных и процессуальных действий [3, С. 6].

В своем данном выступлении К. Сарыджалинская эти противоречия и пробелы, существующие в нормах Уголовно-Процессуального Кодекса в связи с ведением следственных действий, сгруппировала нижеследующим образом:

1. В связи со следственными действиями, осуществляемыми до начала уголовного дела — отметим, что хотя в законодательстве того периода и отражена возможность проведения осмотра места происшествия до вынесения решения о возбуждении уголовного дела, однако в последующем изменении в ст. 207.4 и 217.1 Уголовно-Процессуального Кодекса добавлены слова «назначение экспертизы».

Хотелось бы отметить, что хотя законодательно и затронут данный момент раскритикованный в теоретической литературе, однако мы не считаем вопрос исчерпанным. По нашему мнению, нецелесообразно целиком ограничивать ведение следственных действий, принятием какого-либо процессуального акта.

В неотложных случаях до возбуждения уголовного дела может быть назначен ни то что, осмотр место происшествия и экспертиза, но и назначены и оформлены другие следственные действия. Доводим до вашего внимания, что уголовное производство это система, действующая в рамках судопроизводства, и в любом случае последняя и высшая цель которой защита прав и свобод человека и граждан, восстановление нарушенных прав и законных интересов. По этой причине, мы считаем, что нарушенные или предполагаемые нарушения прав и свобод человека и граждан, должны быть в самые кратчайшие сроки и с минимальной затратой восстановлены. Также как и осмотр места происшествия, и назначение экспертизы до начало уголовного дела возможна, мы предлагаем включение в соответствующие статьи возможность проведения других следственных действий, имеющихся в Уголовно-Процессуальном Кодексе.

2. Вторая группа недостатков связанных с усовершенствованием Уголовно-Процессуального Кодекса, указано в 237-и и 257-м статьях. В действующем уголовно-процессуальном законодательстве сохранен институт понятых. Согласно этому, при осуществлении некоторых следственных и процессуальных действий, в законодательстве отражено участие понятых и удостоверение процессуальных актов своими подписями. Например, осмотр место происшествия [3, 236], производство обыска и выемки [Ст, 44]. Справедливо отмечено, что хотя при проведении некоторых следственных действий и используются понятые, однако в статьях 237 — при извлечении трупа из могилы и 257 — наложении ареста на почтово-телеграфную и иную корреспонденцию, производства ее осмотра и выемки, участие понятых не предусмотрено. В частности при наложении ареста на почтово-телеграфную и иную корреспонденцию, производства ее осмотра и выемки, было раскритиковано право работников управления связи по поводу их процессуального статуса. Мы принимаем критику и пробел в Уголовно-Процессуальном кодексе, в связи с данным вопросом.

Однако в данном случае хотелось бы отметить что, несмотря на противоречия, мы не считаем целесообразным включение в эти статьи [237 и 257] положения, связанное с участием понятых. Наоборот, положения, удостоверяющие участие понятых ни то, что должны быть включены в статьи 237 и 257, но и учитывая требования времени, извлечены из других статей и считать их устаревшими как уголовно-процессуальный институт.

Если выразиться более яснее, сегодня в ходе уголовного процесса мы сторонники использования современной техники. Считаем, что использование достижений современной техники поможет и реализации максимальной экономности (времени и материальных средств) в уголовном процессе, и ведению процесса в условиях прозрачности и объективности.

У данного вопроса имеются правовые и фактические основания. Так, в статьях 227.6, 236.4, 237.3, 245.3, 257.5, 260.5, 262.4, 275.5, утверждено право использования следователем фото, видео и киносъемки или других записывающих технических средств, при проведении соответствующих следственных действий. По нашему мнению широкое и последовательное использование следователем данного права, дадут свои положительные результаты. В таком случае устранится институт понятых.

3. Третий проблематичный момент, встречающийся во время подхода к Уголовно-Процессуальному Кодексу в рамках конституции, связано со следственным действием наложения ареста на имущество, имеющийся в 32-й главе. К. Сарыджалинская отмечает, что между статьями 18.3 и 249.2. и статьей 249.5 Уголовно-Процессуального Кодекса имеются противоречия.

Ученая, приковывая внимание на противоречия, отдала предпочтение статьям 18.3. и 249.2. и отметила, что арест на имущество входит в исключительные полномочия суда. Мы тоже считаем, что обстоятельство, предусмотренное в статье 249.5. Уголовно-Процессуального Кодекса, противоречит статье 29.4 Конституции (Никто без решения суда не может быть лишен своей собственности) и Гражданскому Кодексу.

Статья 61 Конституции Азербайджанской Республики, называется Право на получение правовой помощи. Согласно данной статье:

I. Каждый обладает правом на получение квалифицированной правовой помощи.

II. В предусмотренных законом случаях правовая помощь оказывается бесплатно, за счет государства.

III. У каждого лица с момента задержания, ареста, предъявления обвинения в совершении преступления со стороны компетентных государственных органов есть право пользоваться помощью защитника.

На основании сравнения Конституции 1995-го года с предыдущими Основными Законами мы отметили, что настоящая Конституция охватывает в себе усовершенствованный вариант право на получение правовой помощи. Если обратить внимание, то можно увидеть, что законодательство утверждает не только получение правовой помощи лицом, но и признается как субъективное право оказания квалифицированной правовой помощи.

Квалифицированная правовая помощь обеспечивается высшим образованием адвоката, достаточным его опытом работы. Получение лицом квалифицированной правовой помощи отражено в соответствующем законодательстве.

В уголовном процессе подозреваемое лицо, обвиняемое лицо имеет право на использование помощи защитника, пострадавшее лицо, гражданский истец, гражданский ответчик на помощь представителя. Наряду с этим и защищаемые лица и представители также могут осуществлять процессуальные права.

Из национальных авторов И. М. Джафаров комментируя статью 63 Конституции Азербайджанской Республики справедливо отмечает, что основные вопросы уголовного судопроизводства связанное с презумпцией невиновности, решают не органы следствия и расследования, и не органы прокуратуры. Автор к тому же отмечает, что решение и составленный обвинительный акт следователем, прокурором или судьей о привлечении в качестве обвиняемого лица, отражает мнение этих органов только о виновности лица обвиняемого в совершении преступления, и хотя эти документы впоследствии имеют важное значение для суда с точки зрения решения вопроса виновности лица, однако они ни в коем случае не могут приниматься как акт, подтверждающий

виновность лица обвиняемого в совершении преступления [8, С. 189–191].

Мы хоть и мало, но затронули некоторые по нашему мнению противоречивые моменты и пробелы, имеющиеся в Уголовно-Процессуальном Кодексе.

Также хотим довести до вашего внимания, что конституционную деятельность исследования уголовно-процессуального законодательства, все еще однозначно нельзя считать завершенным.

Список литературы:

1. Конституция Азербайджанской Республики. – Баку. Закон. – 2013. – 68 s.
2. Уголовно-Процессуальный Кодекс Азербайджанской Республики. – Баку. Digesta. – 2015. – 528 с.
3. Проблемы усовершенствования Законодательства Азербайджанской Республики. (материалы научно-практической конференции). Специальный выпуск. – 2005. – 271 с.
4. Аббасова Ф. М. Уголовный процесс. Учебник. Общая часть. – Баку. – 2012. – 500 с.
5. Всеобщая Декларация о правах человека – 1948-й год.
6. Европейская Конвенция о защите прав человека и основных свобод. – Баку. Закон. – 2010. – 34 с.
7. Джафаргулиев М. Уголовный процесс Азербайджанской Республики. Учебник. – Баку. Закон. – 2002. – 904 с.
8. Джафаров. И. М. Пояснение Конституции Азербайджанской Республики. Баку. "Юридическая литература". – 2002. – 552 с.
9. Мовсумов. Д. Г. Советский уголовный процесс. – Баку. – Маариф. – 1989.
10. Гафаров М. С., Эйвазов Г. С. Правоохранительные органы. Учебник. – Баку. Закон. – 2012. – 600 с.
11. Бабаев В. К. Презумпции в советском праве. Горки. "Наука". – 1974. – 124 с.
12. Булаевский Б. А. К вопросу о понятии презумпций в праве. URL:/http://justicemaker.ru/view-article.php?id=10&art=293
13. Быстров Д. В. Юридические презумпции и фикции. Реферат. – 2003. – 12 с.
14. Калиновский К. Б., Смирнов А. В. Презумпции в уголовном процессе. Российское правосудие. – 2008. – № 4. – 101 с.
15. Морквин В. А. Правовые презумпции в уголовном судопроизводстве. – Тюмень. – 2008. – 243 с.
16. Николаевна О. С. Презумция истинности приговора в современном уголовном процессе. Диссертация. – Нижний Новгород. – 2007. –182 с.
17. Шахкелдов. Ф. Г. Концептуальные аспекты презумпции невиновности в уголовном процессе. – Ростов на Дону. –2006. – 379 с.
18. Türkiye Cumhuriyyeti Anayasası/Üzülməz İ. Türk hukunda suçsuzluk karinesi ve sonuçları. TBB Dergisi. – Ankara. – № 58. – 2005. – 72 s.

Section 6. International law

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The role of the international agreement on law sources in the Republic of Albania

Abstract: The purpose of this study is to show the importance of the international agreement on the sources of law in the Republic of Albania. How has changed the importance of the international agreement on the constitutional changes over the years.

Keywords: international agreement, law sources, constitutional changes.

This subject has been chosen to demonstrate the great importance of the international law as part of the obligative law to be implemented in Albania, and as another tool used, which is the international agreement, as well as the approach that the constitution has made to the international agreement as one of law resources. The method used for this work is qualitative research based on constitutional changes over the years, comparing the constitutions established in the Republic of Albania in order to show the role of the international agreement as a implementation mechanism of international lawof our legal system.

International law has a substantial impact in our domestic law, that even for the fact that us being part of the civil law legal family have unified the right with other countries that are part of this legal family, but not only. The international agreement itself is an accord signed by two or more countries to make possible the creation, modification or termination of a legal relationship in the interstate or international arena. International agreements being concluded between states and international organizations are either bilateral or multilateral. International agreement is the instrument drafted by the public international law concluded between the state institutions of the Republic of Albania and other countries or international organizations, regardless of the form and its denomination [1]. Denominations of international agreements are various, we see them as a treaty, convention, pact, protocol, declaration, charter, etc. But regardless of denominations the legal value and enforcement remains the same. States which sign the treaty do not include any firm requirement for labeling the international agreements at the time of signing off international agreements [2, 358].

If we refer to the role of agreements in historical chronology as resources of law and constitutional arrangements we see that in the 1950ˆs [3] constitution in article 58/9 was determined the obligation of signing and ratifying international agreements by the Presidium of the National Assembly. This competence belonged to the People's Assembly Presidium and only in special cases ratification and denouncement could be conducted by the National Assembly. Since the the first creation of the constitution

according to the concept of its sister Constitutions, the Constitution of the People's Republic of Albania provided this legal tool to cooperate with other countries although Albania's collaborations were too few. In the 1976ˆs [4] constitution in Article 67 it was determined that the body that had the right to ratify international agreements was the Assembly. The Assembly ratifies and denounces international treaties of special importance. An innovation for this constitution, different from the past one was the possibility that was given to the Council of Ministers to sign international agreements. In Article 81 of the 1976's Constitution was stipulated that the Council of Ministers concludes international agreements, approves and denounces those that are not subject to ratification. Law No. 7491, dated 29.4.1991 "For the Main Constitutional Provisions" in Article 4 is determined that the Republic of Albania recognizes and guarantees human rights and fundamental freedoms, national minorities, recognized in international documents, which clearly show the readiness of Albania to conclude international agreements. Article 8 stipulates that the legislation of the Republic of Albania considers, recognizes and respects the principles and generally accepted norms of international law, this means that the norms of the international law are provided in the numerous international treaties and the agreement itself is a resource of the interantional law. Article 16/5 determines the competences of the Assembly of the Republic Albania to ratify and denounce: Treaties of a political nature; Treaties or agreements of a military character; Treaties or agreements dealing with the borders of the Republic of Albania; Treaties or agreements relating to the rights and duties of citizens; Treaties that derive financial obligations to the state; Treaties or agreements which derive changes in legislation; Treaties or other agreements which foresee that their ratification or denunciation is done by the National Assembly. On the 1998's Constitution the international law and international agreement finds a new approach.

Republic of Albania in its system of law resources has categorized the law resources following the criteria of hierarchy where the first resource prevails over the second and stands in a superior relation as compared to the resource of a lower rank. In The Constitution of the Republic of Albania (Article 116) are provided normative acts with general power on the Republic of Albanian, as follows:

- Constitution.
- International agreements ratified by law;
- Laws;
- Other acts of the Council of Ministers and the acts of the municipal councils or local authorities.

So our own constitution approved in 1998 as first resource after itself, ranks the international agreements ratified by law, giving it a greater importance and making the international law part of the legal system in the Republic of Albania. Modern constitutions around the world today regulatein the best way relations between domestic law and international law, redefining the procedures to ensure the compatibility between the norms of the two ranks [5, 50]. In the same way the Constitution of the Republic of Albania determines the position, the importance and applicability of international law and the resource of international law itself, the international agreement. Right in the beginning of the first part of the Constitution in Article 5 it provides the international law required to be applied, and one of the mechanisms to implement directly the international law is the signing and ratification of different international agreements by immediately applying them. But this means not only the implementation of the agreements but also the implementation of the international customary norms, as well as the general principles of international law. In the right's resources system the role of the agreements is very important because particular parts of the constitution provide specific international agreement for the regulation of specific institutes of the right. Referring to the constitution of the Republic of Albania, we can distinguish two types of international agreements. By the way that they become part of the albanian legal order, they are divided into two major groups:

- international agreements ratified by the Parliament
- international agreements signed by the government of the albanian state.

This group has been created taking into account the moment of entry into force and the ratification of the international agreement. International agreements ratified by the parliament have a different pro-

cedure of entry into force and becoming part of our legal order. Referring to Law no. 43/2016 "On international agreements of the Republic of Albania" in Article 5 is stipulated that the defined subjects may conclude international agreements on behalf of the Republic of Albania or on behalf of the Council of Ministers.

Given the importance the Parliament will sign and ratify international agreements that are determined in the constitution in Article 121/1, agreements which foresee legal norms concerning

• **territory, peace, alliances, political and military issues**; In terms of this international agreement are included all international agreements which provide for the delegation of the state sovereignty of the Albanian state, military collaboration or even political collaborations with other states. Mentioning here the North Atlantic Organisation which Albania acceded in 2009. Albania became a member of the Organization of the North Atlantic Treaty NATO, after the completion of ratification of the Protocol of Accession by all the allied countries and the deposit of the instrument of accession to NATO, to the Department of State, which is the legal holder of the Washington Treaty. Another case is the United Nations Convention on the Law of the Sea, Montego Bay, 10.12.1982 where the effective date for Albania is June 23, 2003. And many other agreements of this nature [6].

• **rights and freedoms and obligations of citizens**. The entirety of the rights and freedoms provided by the Constitution of the Republic of Albania in the catalog of rights and freedoms: rights and personal freedoms, civil and political rights and freedoms and the social economical and cultural rights and freedoms are guaranteed by the constitution of the Republic of Albania. These include a large number of international agreements signed between Albania and the UN and between the Council of Europe. We can mention a special case here to show the importance of the international agreement in our legal system, the case of the European Convention on Human Rights (ECHR) [7].

In The Constitution approved in 1998 it's foreseen in Article 17 the importance of the European Convention of basic human rights, anticipating that the limitations of human rights on fundamental rights and freedoms can never have more severe restrictions than those predicted by ECHR. In this way the constitution shows a clear position of the ECHR by placing it on par with itself. The fact that the clearly defined position of the ECHR in the constitution shows that its implementation has the same weight with our own consitution. • Republic of Albania's membership in international organizations; Here we can mention international accession agreements frequently appointed as declaration, treaty, Convention etc. Albania through this kind of international treaty has joined the United Nations Organization (UN), Council of Europe (CoE), etc. • assumption of financial liabilities from the Republic of Albania; • Constitution has foresight even other cases that the Assembly by a majority of all its members, can ratify other international agreements that are not contemplated in the above cases.

Law no. 43/2016 "On international agreements of the Republic of Albania" in Article 17 is provided the procedure of ratification of the international agreement by the Parliament of the Republic of Albania. Ratification that absolutely entails the emergence of a law. Ratification as a legal act that shows the consent of the Republic of Albania to be bound by an international agreement signed earlier by it, finalizes the obligation of the Albanian state in front of other international subjects with which it signs the agreement and enabling entry into force of the international agreement and making it applicable in our legal system. When we say ratification in the concept of law no. 43/2016 "On international agreements of the Republic of Albania" we have determined the entry into force. All other agreements which do not require ratification will enter into force and become available to be applied at the moment of signing the international agreement.

The second type provides for the signing of international agreements by the government and the obligation to notify the council for international agreements signed on behalf of the Albanian government. The announcement carried by the prime minister serves as information on international relations created by the government taking the consensus of Parliament of the Republic of Albania, but not only, because it is also considerded a control filter for the government in its activity in the international arena.

We can mention here the numerous cooperation agreements in the field of politics, education and cultural, which enter into force through the Council of Ministers decision.

Ratification or not of the international agreement, so regardless of the way of becoming part of our legal system, it, as one of the main resources of law in Albania has a direct impact on every development or social crisis in our society.

Its impact on the legal system it's reminded in the moment that it becomes a mandatory part to implement in our legal order. The legal order itself being a people's relationship in a society is expressed and sanctioned on the rights, so on the legal norms. Part of these standards are also the rules of conduct forth set on international agreements applicable in the Republic of Albania, for the fact that the international agreement based on the constitution of the Republic of Albania is part of normative acts with general power in the Republic of Albania. Legal order is divided into two elements, the first element is normative and includes the rules of conduct and the second element is factual comprising actual concrete behavior, material that is made according to norms [10, 193]. Given that social interaction are dynamic, we say that the legal norms that regulate these social relationship are also dynamic, namely its legal order is not static, as a result, international agreements always regulate the interstate relations in order to serve the interstate relations born case by case.

The doctrine of international law groups the treaties in two big groups taking into account the type and importance of norms that prescribe behavioral rules for the subjects that sign the treaty. The doctrine divides them into laws treaties and contract treaties [8, 372]. This division makes no difference in the way of signing or ratification or applicability, but it differentiates an international agreement by the character of legal norms provided, whether they are legal norms with general or specific character. Law treaties as well as contract treaties have the same way of ratification by the Parliment of the Republic of Albania, as far as the determined cases predicted by the constitution of the Republic of Albania Article 121/1.

An important element of the international agreement to be part of the Albanian legal system is its applicability. Depending on the applicability or their entring into force the international agreements are applicable or not. In the case of self-executing they do not necessarily require to pass a law to enter into force these agreement, in the second case the applicability is related to passing a specific law of in order to make possible entry into force of the international agreement. Entry into force of international agreements in the Republic of Albania is realized following the same procedures as for other laws, according to Article 117/3 provided in the Constitution of the Republic of Albania. The ratified law is published in the Official Journal together with the agreement in Albanian language, identical in content and meaning with the authentic document. Self-execution of an agreement is discussed when that agreement is not ratified by law. International agreements in the interior of their content do not determine whether the agreement is self-executive or not. Self-execution of agreements is regulated in the constitution or in the constitutional right of each country. Self-execution is a matter to be determined by the domestic courts whenever they're addressed alleged violations of individual rights, or when faced with the difficult case to determine whether national legislation, which a judge applies on a daily basis and which is very familiar, violates or does not comply with an international norm [9]. The number of international agreements signed and ratified by the Republic of Albania is significant, this because of the numerous developments of the Albanian state, but also because of the cooperation in different areas with other countries, in order to have a political, economical, cultural, technological development etc.

Today any interstate relations are regulated with international agreements, relevant to political or financial crises they disappear in the moment that countries cooperate with each other and the main tool in imposing their own reciprocal obligations is the international agreement itself. The function that has been known to the international agreements as appraising the law, manages to unify the right of a group of states as well as to put stability in regional or even global developments.

The international agreement serves to establish obligations between the parties that sign it. The reasons for signing an agreement can be various,

whether to establish stability and peace, to finalize a state of war or even to develop cooparation in different areas. As long as the relations between states are connected to each other, the agreement will serve as a connecting bridge between these countries. In times of crisis or development the agreement brings minimization or termination of crisis or otherwise brings further development. It necessarily becomes the means that makes an adjustment to the domestic legal system of a country to cope with the regional or international changes.

Conclusions

International agreements signed by the Republic of Albania as part of law resources in Albania have a direct impact on our legal system. Because of their position located below the Constitution and above the laws approved by the Assembly they apply immediately if ratified with a law by parliament. Unlike the international agreements signed on behalf of the Republic of Albania, the international agreements signed by the Council of Ministers of the Republic of Albania are self-executing and do not require as a liability to be applied passing of a special law. Ratification or not of the international agreement, so regardless of the way of becoming part of our legal system, it, as one of the main resources of law in Albania has a direct impact on every development or social crisis in our society.International agreements in the Republic of Albania will enter into force with the same procedure as well as to other laws provided for under Article 117/3 of the Constitution of the Republic of Albania. The ratified law is published in the Official Journal together with the agreement in Albanian language, identical in content and meaning with the authentic document.

As a legal tool to make possible the implementation of international law in our domestic law the constitutions adopted in the Republic of Albania, from the first Constitution of 1950 up to the constitutional amendments of 2016 have absolutely accepted its importance. This is due to the fact that they have foreseen the signing of international agreements by the constitutional institutions such as People's Assembly Presidium, the President, the Council of Ministers by expressly providing it in the fundamental law, the constitution.

International agreement as appraising the law manages to unify the right of a group of countries and to put stability in regional or global developments, and also on the case of the development of Albania.The number of international agreements signed and ratified by the Republic of Albania is significant, this because of the numerous developments of the Albanian state, but also because of the cooperation in different areas with other countries, in order to have a political, economical, cultural, technological development, shows the absolute importance of international agreements for our society.

References:

1. Law no. 43/2016 "On international agreements of the Republic of Albania", SPC – 2016.
2. Puto A., Public International Law ", the publishing house "Albin", – 2008.
3. The Constitution of the People's Republic of Albania, Tirana, – July – 1950.
4. LAW Nr.5506, dated 28.12.1976 No. 5506 dated 28–12–1976.htm URL: http://www.qpz.gov.al/doc.jsp?doc=docs/
5. Omari L., Anastasi A., "Constitutional Law", ABC Publishing House, Tirana, – 2010, – P. 50.
6. URL: http://www.punetejashtme.gov.al/files/userfiles/Aktet_e_OKB.pdf
7. ECHR, botom of the Center of Official Publications, July – 2010, – ISBN 978–9928–01–004–9, Law nr.8137 dated 31.7.1996 Convention on the Protection of Human Rights and Fundamental Freedoms 9 Added to the law nr.8641, date 13/07/2000 (additional protocol) Added to the law nr.9264, dated 29.7.2004 (additional protocol) Changed the law nr.9453, dated 15.12.2005 (additional protocol).
8. Benedetto Conforti, diritto internazionale, VII edizioone, s. r.l Scientific Copyright – 2006 editorial, Naples.
9. Higgins R. supra note 2.
10. Luan Omari, principles and institutions of public law, the publishing house "Elena GJIKA", Tirana, – 2012.

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Development of cooperation of the states in struggle against organized crime within the limits of the commonwealth of independent states

Abstract: the article is devoted to the discussion of problems of development of cooperation of the states in the fight against organized crime of the commonwealth of independent states (CIS).

Keywords: organized crime, commonwealth of independent states (CIS), cooperation of the states.

Undoubtedly that the criminality, especially its organised forms, long since got beyond national borders, therefore struggle against it seems to be possible only by wide international cooperation. Thus, the higher level of internationalisation of criminality, the more active and all-round there should be interaction of the states at struggle against the organised crime. As practice shows, most successfully it occurs within the limits of the international organisations. An example to that is cooperation of the Commonwealth of Independent States (CIS) countries on prevention and struggle against the organised crime [1].

In the beginning of the 90th of the 20th century in the conditions of new geopolitical relations before republics of the former Soviet Republic there was a whole complex of problems including connected with maintenance of public order against sharp activization of different criminal groups, whose activity began to carry not only transboundary character, but also to make serious impact on economy of the independent states and safety of citizens. In April, 1992 at meeting of Ministers of Internal Affairs of the independent states in Alma-Ata, it had been concluded and signed Agreement for interaction of the Ministries of Internal Affairs of the independent states in sphere of struggle against crime. Important stage in the field of struggle against organised crime was conclusion of Convention of about legal aid and legal relations on civil, family and criminal cases[2] between the CIS countries, that has allowed more full and more carefully at multilateral level to solve questions of joint struggle against criminality. The convention has been signed in Minsk on January 22, 1993 by heads of member states the CIS.

In the specified Convention the special attention has been paid to the order and conditions of issue by one CIS country to another of the persons who are in territory of each of the states which has signed the Convention, for being criminally liable or for reduction of sentence in execution. Here cases when the extradition is obligatory are considered when it can be refused or when the extradition can be delayed, and also conditions of a capture of the given out person under guards etc. are stipulated. In the Convention, it is also defined the procedure of criminal prosecution. In it, there is noticed that each contracting party according to the legislation undertakes to make criminal prosecution of the citizens suspected of commission of crime in territory of the requesting party. The Convention contains number of the regulations, concerning transfers by contracting parties of the subjects used by criminals, evidentiary and other information on the perfect and investigated crime leading to transfer of the person according to provisions of the Convention.

Approving of the Program of joint efforts about struggle against the organised crime and other dangerous kinds of crimes in the territory of the CIS countries in March, 1993 by the Council of heads of the governments of the CIS countries became following step in the field of struggle against the organised crime.

In this Program especially sharp deterioration of criminogenic conditions in the majority of the state-

participants of the CIS, displeasing the population and posing real threat of national safety and to process of the reforms spent in the sovereign states was marked. According to this Program there was an object in view to develop and conclude interstate agreements concerning cooperation in sphere of struggle against the organised crime, the illegal reference of the weapon, explosive and radioactive substances, about an order of interaction of investigatory-operative groups in territory of other states, about order of interaction of law-enforcement bodies, customs services and frontier troops, about cooperation in sphere of struggle against crimes in bank, credit and financial systems, commercial structures and in foreign trade activities sphere, about cooperation in sphere of struggle against a drug trafficking [2].

Acceptance in September, 1993 by Council of heads of the state-participants of CIS countries of the decision about creation of Bureau for coordination of struggle against organised crime and other dangerous crimes (BKBOP) in territory of the CIS became the important event [3]. Acceptance of this decision has been caused by proceeding expansion of zone of activity of the organised crime, growth of number of the crimes made by organised criminal groups in all former republics of the USSR that has forced country leaders of the CIS to raise the problem of creation of corresponding interstate body which could provide appropriate coordination of efforts of law enforcement bodies in struggle against the organised crime and its displays. Simultaneously with acceptance of the specified decision Position about it Bureau as about constantly operating body on the organisation of struggle against the organised crime and other dangerous crimes in territory of the CIS has been confirmed. Creation of this body was rather timely. The initial stage of activity of Bureau practically has revealed at once its necessity and efficiency. It is organised legal aid rendering on criminal cases within the limits of the Convention on legal aid in Relations to civil, family and to criminal cases with participation operatively-investigatory actions of all Ministries of Internal Affairs of the state-participants of the CIS countries. It is carried out organisation of interaction of law-enforcement bodies of the state-participants of the CIS countries and rendering of assistance in establishment, detention and extradition of the criminals searched at interstate level. To Bureau practice of direction is applied to acceleration of search of lists of the persons who have made especially grave crimes. Single carrying out in territory of the state-participants CIS countries of complex of operatively-preventive actions for various directions of struggle against criminality remains to one of effective directions of joint activity of law-enforcement bodies. BKBOP develops as agreed with all Ministries of Internal Affairs of the CIS countries plans-schedules of carrying out of the complex operatively-preventive actions provided by interstate programs. Actions according to plans-schedules are spent on a wide spectrum of problems of struggle against criminality. These actions provide a concentration of efforts of all Ministries of Internal Affairs on the decision of pressing questions of struggle against criminality. Complex operations were generally recognised.

In November, 1995 in Moscow Council of heads of the governments of the CIS has supported the offer brought by Byelorussia on formation of working group on working out of the project of the Interstate program of joint efforts of struggle against the organised crime in territory of the state-participants CIS for the period up to 2000.

In process of cooperation expansion the understanding of necessity of closer integration of work of departments in all directions of law-enforcement activity grew also. As a result of January, 19th, 1996 Council of heads of the CIS countries makes the decision on creation of Ministerial council of internal affairs of the state-participants CIS (CMIA) [4].

Today the Ministerial council is a body of the branch cooperation, called to provide interaction of the Ministry of Internal Affairs of the state-participants CIS not only concerning struggle against criminality, but also in other directions of their teamwork. The basic form of work — sessions which serve as an original forum in which frameworks of the head of departments the coordinated decisions directed on neutralisation of new calls and threats, the CIS countries infringing on interests make. Council acts in a role of the uniform coordination centre allowing on the basis of the deep analysis developing on territory of the countries of Commonwealth of operative conditions to develop effectual measures

of reaction on the whole spectrum of questions, the organised crime connected with counteraction, to terrorism, a drug trafficking and other dangerous kinds of crimes.

CMIA is the active participant of process of formation of contract-legal base and organizational bases of interstate interaction in struggle against criminality. Within the limits of this work he cooperates with Executive committee of the CIS and Inter-parliamentary, Assembly of the countries of the Commonwealth. The majority of initiatives CMIA directed on formation of uniform strategy of counteraction to criminal activities, at interstate level find the reflection in modelling acts, and also the decisions accepted by Council of heads of the governments and Council of heads of the CIS countries. As toolkit of such decisions interstate target programs in various directions of struggle against criminality which put organizational bases act and define a vector of efforts of law-enforcement community with the account of realities of today. The applied mechanism of realisation are coordinated preventive, operatively-searching actions and the special operations directed on neutralisation of organised criminal groups, whose activity has transboundary character [5].

In April, 1996 in Moscow Council of heads of the governments of the CIS has approved already developed a Program which has included measures on strengthening of international legal base of cooperation, perfection and harmonisation of national legislations, carrying out of joint interstate target operatively-preventive operations, information, scientific, personnel, material and financial maintenance. Realisation of the specified Program has allowed to give dynamism and new quality to cooperation of the state-participants CIS in the field of struggle against criminality.

Developed conditions have demanded acceptance of the new Program of the interstate measures directed on perfection of cooperation in struggle against criminality. Therefore with a view of maintenance of efficiency of cooperation in struggle against criminality Council of heads of the CIS countries has decided to confirm on January 25, 2000 the Interstate program of joint efforts of struggle against criminality for the period from 2000 up to 2003 [6].

In this connection the base documents providing target application of available forces and means of law-enforcement structures, the interstate programs accepted on intermediate term are period according to decisions of Council of heads of the CIS countries. The interstate program of joint efforts of struggle against criminality for 2011–2013, has been directed on the further perfection of cooperation of the state-participants CIS, authorised bodies and bodies of branch cooperation of the CIS in struggle with criminal activity [7]. Primary goals of the Program: first development of international legal base of cooperation of the state-participants CIS; secondly perfection and harmonisation of the national legislation of the state-participants CIS; in the third carrying out of the complex joint and-or coordinated interdepartmental preventive operatively-search actions and special operations; in the fourth information and scientific maintenance of cooperation; cooperation realisation in a professional training, improvement of professional skill of experts.

The interstate program of joint efforts of struggle against criminality during 2014–2018, which has problems: first development of international legal base of cooperation of the state-participants CIS; secondly perfection and harmonisation of the national legislation of the state-participants CIS; in the third carrying out complex joint and-or coordinated interdepartmental preventive, operatively-of searching actions and special operations; information and scientific maintenance of cooperation; in the fourth realisation of cooperation in a professional training, improvement of professional skill of experts; development of cooperation with the international organisations [8]. The received experience of interstate cooperation allows BKBOP to realise in practice necessary administrative impulses in interests of consolidation of efforts of law-enforcement bodies of the countries of the Commonwealth in struggle against criminality against the account of modern threats. It, first of all, introduction in a life of the Concept of development of cooperation of the Ministries of Internal Affairs of the state-participants of the Commonwealth of Independent States for the period up to 2020[1], confirmed on gradual expansion of a coordination role of Bu-

reau, circle of problems carried out by it and functions in the general interests of the countries of the Commonwealth. The bureau actually became the multipurpose organisation on assistance on variety of directions of interstate cooperation in struggle against criminality.

Thus, consolidation and escalating of efforts on interaction of law enforcement bodies of the Commonwealth will allow to solve more productively one of the main strategic problems of the CIS — the further development of integration processes in the Commonwealth countries.

References:

1. Criminology: Textbook/I. Ya. Kozachenko, K. V. Korsakov. – Moscow: NORMA-INFRA TH, – 2011. – P. 304.
2. Dolgova A. I. Criminological organised crime and corruption estimations, legal fights and national safety. – Moscow. – 2011. – 668 p.
3. Derevyanko E. BKBOP: 22 years of fruitful work. – Moscow J. Commonwealth – 2015. – No. 3. – P. 36–40.
4. CMIA: yesterday, today, tomorrow. – Moscow. J. Commonwealth – 2015, – No. 4. – P. 10–16.
5. Criminality is resisted by commonwealth of professionals. – Moscow. J. Police of Russia – 2016. – No. 1. – P. 10–27.
6. Interstate program of joint efforts of struggle against criminality for the period from – 2000 up to – 2003 (Confirmed by the Decision of Council of heads of the states of the Commonwealth of Independent States on – January 25, – 2000, Moscow City).
7. Interstate program of joint efforts of struggle against criminality for – 2011–2013 (confirmed by the Decision of Council of heads of the states of the Commonwealth of Independent States on – December 10, – 2010, – Moscow City.
8. Interstate program of joint efforts of struggle against criminality for – 2014–2018. Confirmed by the Decision of Council of heads of the states of the Commonwealth of Independent States from – October 25, – 2013, – Minsk City.

Section 7. Political institutes, processes and technologies

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Public Financing of Political Parties: Introduction in Ukrainian and Polish Experience

Abstract: The methods of financing of political parties implemented in Poland and Ukraine have been considered in the article. The common and different characteristics of financing political parties' activities in these countries have been analyzed. Besides, the author has focused on the investigation of all advantages and positive effects from the implementation of anti-corruption measures in Ukraine, the results of which would enhance financial transparency and accountability and responsibility of the politicians.

Keywords: public financing, political party, political corruption, transparency, accountability.

Political parties have always been one of the core subjects of investigation in political science, because party as an association of active citizenship is an intermediary between the population and public authorities in democratic countries. In Ukraine, as a country that is still under a huge transformation process, it is extremely important to promote the development of one of the main political institutions — political parties, and secure its development in not quantitative, but qualitative aspects. Due to the fact, that Ukraine and the countries of Central and Eastern Europe, one of which is Poland, have largely similar political past (processes), the experience of successful implementation of the democracy establishments in the EU countries is highly important for Ukraine to learn and borrow the EU positive experiences.

Therefore**, the purpose of this article** is to define, compare and characterize common and different features in the funding of parties in Poland and Ukraine. Moreover, it is aimed to review the forms of public funding of political parties which have been introduced in Ukraine.

Let us begin with the characteristics of financing political parties implemented in the Polish legislature. The requirement for transparency of financing of political activities is clearly defined in the Constitution of the Republic of Poland accepted in 1997. In addition, a separate section titled "Finances and Financing of Political Parties" defining the possible sources of the financing and the main mechanisms of controlling, has been singled out in the Law from June 27, 1997. The modern system of financing political parties in Poland has been functioning since 2001. Incomes and expenses of the parties has been regulated by the Law "On Elections to the Sejm and Senate of the Republic of Poland" from April 12, 2001 and the Law "On the Political Parties" from 1997 with some extensive innovation added in 2001 [1].

Subventions from the state budget have been determined as the main source of financing political parties. For receiving state financing are eligible the parties, which received leastwise 3% of all valid votes at the national elections to the Sejm, and at least 6% in a case of the coalition. It is worth noting that not only the parliamentary parties are eligible to receive

the state financing, as the threshold for the Sejm in Poland is fixed at 5% for the political parties and 8% for the electoral blocs. However, other ways of financing are significantly limited. The parties have been completely forbidden to receive financing from other legal entities, and a limit on the amount of membership fees, donations and inheritance from individuals has been set. The maximum annual amount of donations from individuals to a party's election fund cannot exceed 15 minimum salaries [2].

The system of budget financing of the political parties in Poland slightly varied in 2002–2003, but this primarily concerned the size of state donations. Due to the economic crisis in the country, the amount of state financing from the budget was reduced for two years [1].

An important point in the process of regulation of political parties' financing is supervision and control over incomes and expenses from the parties' budget. The system of control over financing political parties can be divided into two levels. The first one, of formal character, is carried out by specially created agencies. This primarily is the National Electoral Commission, the Supreme Chamber of Control, the Central Anticorruption Bureau and the Public Procurement Office [2]. The parties that received state financing are obliged to submit an annual report about the use of funds to the National Electoral Commission, which successively deals with authentication of the received data. It is worth noting that the reports must be published at the web-site of the National Electoral Commission for ensuring transparency [3].

Informal monitoring is executed mostly by non-government organizations. The most known of them are the Institute of Public Affairs and the Stefan Batory Foundation. The present system of financing political parties in Poland has existed since 2001. Although it is not perfect, still it quite efficiently struggles with the disclosures of political corruption in the country [2].

The budgetary financing of political parties and the limitation of contributions in support of the parties by individuals and legal entities was introduced in Ukraine in 2016.

On October 8, 2015, the Supreme Rada (Parliament) of Ukraine passed the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Preventing and Counteracting Political Corruption" [4]. Primarily the Law was passed for creating conditions for the beginning of state financing of political parties, the consequence of which would be the change of priorities in the parties' functioning. They would work for the voters and at the expense of the voters.

Two variants of direct financing of the statutory and electoral activities of the parties have been introduced in Ukraine. Let us consider them in detail.

The budgetary financing of the parties that overcame the 5% threshold was started in July 2016. Such financing will be continued till the next parliamentary elections under the condition of strict and proper financial reporting of those political parties [4].

After the next parliamentary elections to the Supreme Rada, the provision on financing the statutory activities of all the political parties which have overcome the 2% electoral threshold will be enforced [4]. Furthermore, a party will be eligible for reimbursement of the expenses related to financing their electoral campaign during the elections of the people's deputies of Ukraine, if at the last regular or extraordinary elections such a party participated in the distribution of the seats.

This means that after the upcoming parliamentary elections to the Supreme Rada, in Ukraine as in Poland, not only the parliamentary parties will be financed, but also those which have overcome the established minimum amount of electoral votes.

Ukraine has set a limit for receiving financing from legal entities by political parties, but this financing is not completely prohibited as it is in Poland. The established limit in Ukraine for funding a political party by legal entities cannot exceed the amount of eight hundred minimum salaries, nor exceed the amount of four hundred minimum salaries from the individuals [4].

In accordance with the European, including Polish, experience, a mandatory public reporting of political parties about its property, incomes, expenses and financial liabilities on the official web-site of the National Anticorruption Agency has been introduced.

The combination of these two requirements significantly complicates the shadow financing by one person or institution in substantial amounts, since all incomes

of the political party will be monitored and the financial capacity of the persons or institutions executing the contributions to the political parties will be audited.

Analysis of the financial reports is carried out by the Central Electoral Commission and the National Anticorruption Agency. The quality functioning adjustment of the latter institution as the main controlling authority has just been started.

The legislature of Ukraine, likewise Poland, on public state financing of political parties and control over incomes and expenses from their budget meets most standards known in the legislatures of European countries and the recommendations of GRECO [5]. Nevertheless, the Ukrainian legislature requires completion in the provisions on financing the electoral campaign. Besides, the expected positive impact of the innovations primarily depends on particularly developed and implemented mechanisms of accountability and responsibility, and the efficiency in the work of the regulatory authorities.

Under the condition of full implementation of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Preventing and Counteracting Political Corruption" from October 8, 2015, positive impacts in the sphere of overcoming political corruption could be expected, namely:

– reducing the process of lobbying business interests;

– increasing transparency and control over the financial activities of politicians and political parties;

– creating the conditions for more equal electoral campaign;

– increasing the level of responsibility and punishment for failure in complying with the legislature.

One of the possible negative consequences of the state public financing of the statutory activities and electoral campaigns of political parties is support of the major political parties which previously received seats in the Parliament.

References:

1. Janusz Zawadzki System finansowania partii w Polsce – praktyka i kierunki rozwoju. Available at: URL: http://www.ue.katowice.pl/fileadmin/_migrated/content_uploads/20_J. Zawadzki__System_finansowania_partii_politycznych… pdf
2. Finansowanie partii politycznych w Polsce – czy i jakie zmiany? Jarosław Zbierane. Available at: http://www.batory.org.pl/upload/files/Programy% 20operacyjne/PolicyPaper_Finansowanie%20 partii.pdf
3. Subwencje z budżetu państwa dla partii politycznych. Jawność i kontrola. Red. J. Zbieranek. ISP, – Warszawa – 2008.
4. Zakon Ukrainu 'Pro vnesennya zmin do deyakyh zakonodavchyh aktiv Ukrainu shhodo zapobigannya i protydiji politychnij korupciji' vid 08 zhovtnya – 2015 r.//Vidomosti Verhovnoji Rady Ukrainu. – 2015.
5. Jevropejskyj dosvid derzhavnogo finansuvannya politychnyh partij: vysnovky dlya Ukrainy//Analitychna zapyska. Available at: http://old.niss.gov.ua/monitor/juni08/9.htm (accessed 15 March 2016)

Section 8. Political problems of the international relations, global and regional development

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Territorial features of the subjects of the Russian Federation in foreign economic relations

Abstract: In the late XIX – early XX centuries. In the context of the aggravation of national relations in Russia, many publications appeared on problems of autonomy and federation [1, 136].

Keywords: federalism in Russia, constitutional-legal status of a subject of the Russian Federation.

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Территориальные особенности субъектов Российской Федерации во внешнеэкономических отношениях

Аннотация: В конце XIX — начале XX вв. в условиях обострения национальных отношений в России появилось множество публикаций по проблемам автономии и федерации [1, 136].

Ключевые слова: федерализм в России, конституционно-правовой статус субъекта Российской Федерации.

Неотъемлемым элементом статуса субъекта РФ как субъекта федеративных правоотношений являются гарантии его прав. В Конституции РФ, как и в большинстве конституций современных федеративных государств, научная категория «гарантии прав субъекта Федерации» не получила закрепления. Поэтому в главе «Федеративное устройство» Конституции РФ отсутствует не только раздел или специальное выделение статей, в которых могли быть сгруппированы гарантии прав субъекта РФ, но и собственно дефиниция «гарантии прав субъекта РФ». Вследствие этого гарантии являются доктринальной категорией, а их выделение из норм Конституции РФ возможно лишь посредством толкования. Для этого необходимо обратится к общепринятому понятию «гарантии прав субъекта права». В общей теории права гарантии прав субъекта права обычно рассматриваются как условия и правовые средства, направленные на обеспечение, охрану, защиту прав субъекта в целях их «нормальной» реализации. Условия понимаются как режим законности со всеми присущими ему элементами.

Анализ норм Конституции РФ позволяет выделить следующие группы конституционных гарантий прав субъекта РФ как субъекта федеративных правоотношений:

1. гарантии обеспечения прав субъекта РФ;

2. гарантии охраны прав субъекта РФ;

3. гарантии защиты прав субъекта РФ;

4. гарантии восстановления прав субъекта РФ [2, 430–436].

Следует отметить, что не в полной мере, на текущий момент, затрагивают комплекс проблем субъектов Российской Федерации, в том числе их региональные особенности [3, 230].

Понятие внешнеэкономической деятельности (ВЭД) в нашей стране появилось с началом осуществления внешнеэкономических реформ. В результате, в процессе проведения внешнеэкономических реформ сложилось два понятия: внешнеэкономические связи (ВЭС) и внешнеэкономическая деятельность, последнее из которых изменило существующее ранее значение и характер ВЭС [4, 174].

Переход к открытой рыночной экономике требует преобразований во внешнеэкономической сфере с тем, чтобы обеспечить включение России в мировое хозяйство. Необходимость преобразований определяется:

1. неблагоприятной структурой внешнеторгового оборота;

2. распадом СССР.

В современных условиях интеграция экономической жизни идёт по многим направлениям, в частности, через:

– обмен средствами производства, технологиями, информационными структурами;

– развитие торговли;

– рост обмена научно-техническими знаниями;

– международную миграцию рабочей силы [5, 31].

На рубеже XXI века внешнеэкономические связи и внешнеэкономическая деятельность России переживают сложный период глубоких качественных преобразований, связанных с осуществлением реформ и поиском путей интегрирования в систему мирохозяйственных отношений.

Основными тенденциями развития внешнеэкономической деятельности в современных условиях могут быть:

1. восстановление и развитие экспортного потенциала страны;

2. использование иностранных кредитов для технического переоснащения;

3. повышение конкурентоспособности российских товаров на внешнем рынке на основе модернизации производства;

4. изменение структуры импорта за счёт увеличения удельного веса продукции промышленного производства в форме высокоточных технологий;

5. обеспечение экономической безопасности страны за счёт совершенствования экспорта и импорта [6, 245].

На всех исторических этапах развития России внешнеэкономическая деятельность оказывала влияние на решение экономических проблем на различных уровнях: народного хозяйства в целом, отдельных регионов, объединений, предприятий.

В современных условиях ход экономической реформы в России определяется тем, что центр тяжести всё в большей степени переносится на места, то есть в регионы. На региональном уровне, так же как и на государственном, происходит становление системы управления вообще и внешнеэкономической деятельности в частности [7, 441–448].

Система и методы региональных исследований постоянно совершенствуются. Основная методологическая задача заключается в решении общих и частных теоретических и практических проблем по двум взаимосвязанным направлениям:

1. научное предвидение и всестороннее обоснование процессов и тенденций, определяющих эффективное размещение производительных сил в различные периоды экономического развития страны;

2. выявление многосторонних факторов и научное обоснование системы целенаправленного формирования экономического и социального развития отдельных регионов, находящихся в различных природных условиях и на разных стадиях экономического развития [8, 76–86].

Совершенствование и развитие внешнеэкономической деятельности регионов Юга России в условиях становления рыночной системы хозяйствования способно стать эффективным фактором оздоровления и последующего развития не только экономики региона, но и всей страны. Как составная часть хозяйственного комплекса внешнеэко-

номическая деятельность должна воздействовать на совершенствование внутрихозяйственных пропорций, развитие производительных сил, повышение уровня занятости населения. Решение этих проблем важно для всех регионов, но особую актуальность они приобрели для Юга России.

Внешнеэкономическая деятельность субъектов этого субфедерального образования имеет разнообразную динамику и структуру, однако используется недостаточно.

Однако в условиях становления рыночных отношений обозначилась разная степень готовности отдельных регионов России к развитию внешнеэкономической деятельности. К основным факторам, определяющим социально-экономическую ситуацию в регионах Юга, относятся имеющиеся производственный потенциал, географическое положение, природно-климатические факторы, ресурсный потенциал, демографический потенциал и структура населения, структура и специализация хозяйства, объемы иностранных инвестиций, экспорт, а также степень государственного влияния на экономику [9, 69–71].

В соответствии с общими принципами государственного устройства России федеральные законодательные акты, указы и распоряжения Президента, постановления Правительства Российской Федерации, нормативные акты федеральных органов исполнительной власти в установленном порядке действуют на всей территории Российской Федерации. Все это в полной мере относится к сфере внешнеэкономической деятельности (ВЭД). Вместе с тем это не означает, что у субъектов федерации нет никаких прав в сфере внешних отношений с иностранными государствами, их субъектами и фирмами.

Необходимость единой внешнеэкономической политики и внешнеэкономической линии РФ и ее составных частей диктуется единством и взаимозависимостью хозяйственного комплекса страны. Механизм внешнеэкономической деятельности как часть целостной системы организации и управления хозяйственным комплексом страны призван расширить хозяйственную самостоятельность всех участников внешнеэкономических связей. Повышение роли региональных органов в хозяйственной деятельности предполагает их участие во внешнеэкономической деятельности как важного звена, регулирующего, координирующего и стимулирующего ВЭД на подведомственной территории. Осознание субъектами Федерации полезности скоординированных действий во внешних делах дает широкие возможности в воздействии на деятельность государства, в том числе и в области ВЭД [10, 243–254].

Разграничение предметов ведения — это вопрос об отношениях между Федерацией и ее субъектами, а вопрос о разграничении компетенции и полномочий касается отношений между отдельными видами федеральных органов и органов субъектов Федерации.

В предметах ведения выражаются и конкретизируются функции государства. Для более успешной реализации они могут быть распределены между государством в целом (Федерацией) и его составными частями (субъектами Федерации). И здесь возникает один из сложнейших вопросов государственного строительства — оптимальность распределения сфер деятельности предметов ведения Российской Федерации и ее субъектов.

После принятия Конституции РФ 1993 г. возникало и возникает много сложностей с реализацией предметов ведения как Российской Федерацией, так и ее субъектами. Со всей остротой эти проблемы встают и при осуществлении в последнее время укрепления вертикали государственной власти.

Проблема определения компетенции федеральных органов власти является главной и наиболее сложной в любом федеративном государстве. Федерация не может обладать неограниченными полномочиями по управлению страной, она обязана делиться этими полномочиями с субъектами Федерации, без чего государственная власть не может носить демократический характер. Субъекты Федерации заинтересованы в существовании сильной федеральной власти, наделенной широкими полномочиями для защиты и обеспечения общих интересов. Но в то же время они не хотят утратить своей самостоятельности и обладать правом решать лишь второстепенные вопросы жизни своего населения. Это —

объективное противоречие любой федерации, заставляющее власти тщательно и оптимально проводить разграничение компетенции государственных органов федерации и ее субъектов [11, 418–423].

Деятельность органов государственной власти субъектов Российской Федерации актуальна с точки зрения влияния этих органов на развитие правового государства. Законодательные органы субъектов Российской Федерации ответственны за построение «нижнего этажа» правовой системы.

В настоящее время в субъектах Федерации существуют различные виды взаимоотношений законодательной и исполнительной властей, учитывающие особенности этих субъектов Федерации. Не всегда региональное государственное строительство укладывается в стандарты, заданные Конституцией Российской Федерации и Федеральным законом «Об общих принципах организации законодательных (представительных) и исполнительных органов государственной власти субъектов Российской Федерации». Однако это не означает жесткой унификации организации власти на уровне субъектов Российской Федерации. Унифицированы могут быть только основные принципы деятельности органов власти субъектов Российской Федерации. Сама идея федеративного государства предполагает многообразие подходов к решению конкретных вопросов организации системы органов государственной власти.

Законодательные органы субъектов Федерации обладают значительным набором полномочий в различных сферах жизни соответствующего субъекта Российской Федерации: организации государственной власти и местного самоуправления, в области бюджета, экономических и финансовых отношений, в области землепользования, природопользования, охраны окружающей природной среды, объектов природы, истории и культуры и др.

Законодательные полномочия образуют главную составляющую компетенции представительных органов субъектов Российской Федерации. Именно реализации законодательных полномочий посвящается основное время деятельности данного органа государственной власти субъекта Федерации.

В соответствии с Конституцией Российской Федерации федеральные органы исполнительной власти и органы исполнительной власти субъектов РФ могут по взаимному соглашению передавать друг другу осуществление части своих полномочий.

Постановление Правительства РФ определяет порядок взаимодействия и координации деятельности органов исполнительной власти субъектов РФ и территориальных органов Министерства внутренних дел РФ, Министерства РФ по делам гражданской обороны, чрезвычайным ситуациям и ликвидации последствий стихийных бедствий, Министерства юстиции РФ, Федеральной службы исполнения наказаний, Федеральной службы судебных приставов, федеральных министерств и иных федеральных органов исполнительной власти, руководство которыми осуществляет Правительство РФ, федеральных служб и федеральных агентств, подведомственных этим министерствам (далее — территориальные органы) [12, 171–174].

Список литературы:

1. Саутиева Т. Б. Федерализм в России: история и современность//Сб. научных трудов по материалам Международной научно-практической конференции: «Правовое регулирование отдельных сфер жизни общества в свете европейской интеграции: проблемы теории и практики». – Пятигорск: Изд-во «РИА-КМВ», – 2011.
2. Саутиева Т. Б. Конституционно-правовой статус субъекта Российской Федерации//Ценности и интересы современного общества: Материалы Международной научно-практической конференции, проводимой в рамках X Васильевских чтений в октябре – 2011 г., – часть III. – М.: Изд-во РГТЭУ, – 2011.
3. Саутиева Т. Б. Государственно-правовая специфика субъектов Российской Федерации//Социально-экономические проблемы современного общества: Материалы III международной научно-практической конференции. – Прага: Изд-во «Vedecko vydavatelske centrum « Sociosfera – CZ», – 2014.

4. Саутиева Т. Б. Развитие взаимоотношений Российской Федерации и ее субъектов регулирования внешнеэкономической деятельности//Инновационное развитие Российской экономики: финансовые, правовые и социальные аспекты. Сборник научных трудов. – Пятигорск: Изд-во «РИА-КМВ», – 2010.
5. Саутиева Т. Б. Основные тенденции в развитии внешнеэкономической деятельности в условиях интернационализации и глобализации производства//Социально – экономические и правовые аспекты развития ЮФО. Материалы Международной научно-практической конференции. – Москва – Пятигорск: Изд-во «РИА-КМВ», – 2006.
6. Саутиева Т. Б. Внешнеэкономическая деятельность как объект государственного регулирования в условиях интернационализации и глобализации производства//Ценности и интересы современного общества: Материалы Международной научно-практической конференции, проводимой в рамках IX Васильевских чтений в октябре – 2010 г., – часть III. – М.: Изд-во РГТЭУ, – 2010.
7. Саутиева Т. Б. Необходимость управления внешнеэкономической деятельностью//К 200-летию КМВ: научные материалы «Актуальные проблемы экологии, экономики, культуры», сборник научных материалов. – Пятигорск: Изд-во ИнЭУ, – 2003.
8. Саутиева Т. Б. Региональная экономика и региональная политика: актуальность развития на современном этапе//Актуальные проблемы экономического и социального развития на современном этапе: Материалы межрегиональной научно-практической конференции. – Пятигорск: Изд-во ИнЭУ, – 2001.
9. Саутиева Т. Б. Пути активизации внешнеэкономической деятельности регионов Юга России//Актуальные экономические проблемы Юга России. Симпозиум XII. Материалы IV Международного конгресса «Мир на Северном Кавказе через языки, образование, культуру». – 21–24 сентября – 2004 года. – Пятигорск: ПГЛУ, – 2004.
10. Саутиева Т. Б. Правовые основы взаимодействия федеральных и региональных органов управления во внешнеэкономических отношениях современной России//Сб. научных статей по материалам «Круглого стола» «Проблемы обеспечения законности и правопорядка в современной России». – Москва – Пятигорск: Изд-во «РИА-КМВ», – 2010.
11. Саутиева Т. Б. Внешнеэкономические отношения: разграничения предметов ведения на региональном и федеральном уровнях//Экономика, государство и общество в XXI веке: Материалы Международной научно-практической конференции, проводимой в рамках IX Румянцевских чтений в апреле – 2011 г., – часть IV. – М.: Изд-во РГТЭУ, – 2011.
12. Саутиева Т. Б. Законодательные органы государственной власти и их влияние на различные сферы жизни соответствующего субъекта Российской Федерации//Новые подходы в экономике и управлении: Материалы IV международной научно-практической конференции. – Прага: Изд-во «Vedecko vydavatelske centrum « Sociosfera – CZ», – 2014.

Section 9. Political institutes, processes and technologies

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GrePolDis: The Greek Corpus of Political Discourse

Abstract: The GrePolDis Corpus is a Greek Corpus of Political Discourse of various types, such as parliamentary speeches, interviews, press conferences, articles, pre-election speeches and more. The motivation behind the development of the GrePolDis corpus arose from the increasing number of applications it was found to have to the research of both linguists and political scientists.

Keywords: political discourse, corpus development, corpus-based methodology.

Introduction

According to Sinclair, "A corpus is a collection of pieces of language text in electronic form, selected according to external criteria to represent, as far as possible, a language or language variety as a source of data for linguistic research." [8, 16]. Corpus-based language studies guarantee precision, completeness and speed with the processing of language material since the process is applied to naturally produced language material collected and structured in such a way as to be representative of the language or language variety it refers to [1; 3; 6].

Corpus-based studies were initially applied to linguistics research for the extraction of lexical, grammatical, syntactic, semantic, pragmatic and other linguistic information. The approach spread to include applied linguistics areas as well, such as first and second/foreign language learning, discourse analysis, forensic linguistics, stylistics, etc. [2; 5]. Nowadays, it is applied to a great number of research areas other than linguistics, such as to education, sociology, philology, mass media sciences, political sciences, etc. [4; 7].

Language is the most important tool politicians use to communicate their ideology, to persuade and to argue. Due to the important position of language in political studies, the language used in politics is a very interesting field to study [9]. This language is a subject for study for both politicians themselves and those who want to research this type of language, as well as the results of its various uses. The advantages of corpus-based studies have been lately recognized by political discourse analysts. Of course linguists, especially discourse analysts, can benefit when applying corpus-based methodology for the study of political language. But it is important that politicians also have valid information on the way they write, speak and communicate with other politicians or non-politicians. They can analyze the way other politicians speak, extracting features they want to adopt or avoid. Political analysts can even match discourse with actions of the past or the future [5].

This study presents the GrePolDis corpus of Greek Political Discourse, developed over the last years at the Informatics Laboratory of the Department of Mediterranean Studies, University of the Aegean. The corpus aims to be a strong tool for both linguists focusing on political discourse and political scientists researching political discourse for communication and political purposes.

The structure of the GrePolDis Corpus

The corpus has been developed to be used for various types of research questions coming from a variety of researchers from the areas of linguistics, communication studies, political studies, sociology and more. For this reason, it consists of various types of political discourse language material, i. e. interviews, conversations, articles, statements, press conferences, pre-election political spots, parliamentary speeches, pre-election speeches and other types of speeches. The material has been retrieved from the official Hellenic Parliament webpage, the official webpages of politicians, mass media webpages and YouTube [11]. It covers a large number of political parties and politicians.

An important feature of the corpus is that a significant part of it has been manually annotated with part of speech information. This currently refers to 158 interviews of ex-Prime Minister Giorgos Papandreou, with a total of more than 400,000 words. The manual annotation is hard and time-consuming work which was decided upon since it guarantees precision and completeness. The words of every interview have been annotated with detailed part-of-speech tags. Verbs, for instance, are tagged with mood, tense, active/passive voice, number and person, pronouns are tagged with the exact type, number and person, adverbs with the adverb category, etc.

The GrePolDis corpus is structured in such a way that the users can either use it as a whole or they can use sub-corpora according their research requirements which may involve specific time periods or specific types of political discourse. The main sub-corpora are currently those of parliamentary discourse, consisting of minutes of the Hellenic Parliament, of politicians' parliamentary speeches, consisting of the "clean" language material of specific politicians in the Hellenic Parliament; of political parties discourse, consisting of discourse of politicians belonging to specific political parties; of pre-election political spots, of pre-election speeches and of Giorgos Papandreou's discourse. Discourse from political leaders is of particular interest and as such there have been efforts toward its inclusion in the corpus. The sub-corpora described below are the main ones but specific sub-corpora according to researchers' needs can be structured and used to fit the specific needs.

Parliamentary discourse

The sub-corpus of parliamentary discourse consists of language material from the Hellenic Parliament for the years 2011–2016. It is dynamic and currently consists of 40,817,402 words. The material has been retrieved from the official Hellenic Parliament webpage [10]. The researcher can use either the whole of the sub-corpus or can choose specific parts of it depending on time periods or specific sessions. For the language material of each plenary session of Parliament in the sub-corpus, meta-data is kept which includes the date, the period, the session number, the meeting number, the size of the text in terms of number of words, the electronic address of its retrieval and any notes that seem appropriate.

Table 1 gives the structure and size of the sub-corpus of parliamentary discourse. The corpus consists of the minutes of the 232 plenary sessions of the year 2011, 173 plenary sessions of 2012, 207 plenary sessions of the year 2013, 182 plenary sessions of the year 2014, 144 plenary sessions of the year 2015 and 202 plenary sessions of the year 2016. The total size of the corpus is 40,817,402 words, with 8,429,891 words from the minutes of 2011, 4,265,431 words from the minutes of 2012, 7,655,904 words from the minutes of 2013, 7,395,673 words from the minutes of 2014, 5,435,784 words from the minutes of 2015 and 7,634,719 words from the minutes of 2016.

Table 1. – The parliamentary discourse sub-corpus

year	number of plenary sessions	size (words)
2011	232	8,429,891
2012	173	4,265,431
2013	207	7,655,904
2014	182	7,395,673
2015	144	5,435,784
2016	202	7,634,719
total	1140	40,817,402

A sample of the language material of the ΡΠΣΤ' plenary session of September 9th, 2016, follows.

Κύριε Υπουργέ, να ξέρετε ότι ως Δημοκρατική Συμπαράταξη ίσως ήμασταν το μόνο κόμμα που ήρθαμε μαζί σας στη διαδικασία της αυτοψίας, κάναμε προτάσεις, δεν συμμετείχαμε σε φωνές ή οτιδήποτε άλλο, ήμασταν συνετοί στο να προχωρήσει η προσπάθεια και

να στηρίξουμε τους ανθρώπους της Αρκαδίας και της περιοχής και τώρα και τους υπόλοιπους. Σας κάναμε συγκεκριμένες προτάσεις και σας τις στείλαμε στο Υπουργείο. Αντιμετωπίσαμε και το δικό σας θέμα να μην μπορείτε να έρθετε πριν δεκαπέντε με ηρεμία, με αυτοσυγκράτηση. Όμως, με συγχωρείτε, αν έχετε βάλει πλαφόν το 30% στις αποζημιώσεις, φοβάμαι ότι πρώτον, δυστυχώς οι πολίτες και οι αγρότες δεν θα μπορούν να ανταπεξέλθουν.

Politicians' parliamentary speeches

The sub-corpus of specific politicians' parliamentary speech contains language material from the minutes of the sessions of the Hellenic Parliament. The difficulty of the construction of this sub-corpus lies in the fact that minutes of Parliamentary sessions had to be manually processed for the extraction and categorization of the different persons' speech.

The sub-corpus contains parliamentary speech from 115 politicians, of eight political parties, with a total of 7,887,173 words. The corpus can be used as a whole, but also specific political parties or specific politicians can be chosen for processing. For every speech, information regarding the speaker, his/her political party, the date, the session, the period and the size of the speech in terms of number of words are kept. Table 2 gives the number of persons and the total number of words per political party represented in this sub-corpus.

Table 2. – Participants and size of discourse per political party's parliamentary speech

political party		politicians	size (words)
Independent Greeks	ANEL	7	230,127
Democractic Left	DIMAR	2	289,298
Communist Party of Greece	KKE	5	992,830
New Democracy	ND	40	2,840,559
Panhellenic Socialist Movement	PASOK	4	255,449
The River	POTAMI	4	87,483
Coalition of the Radical Left — Unitary Social Front	SYRIZA	46	2,995,041
Golden Dawn	XA	7	456,686
total		115	7,887,173

National Elections of January 25th, 2015: Pre-election political spots.

This sub-corpus consists of language material from the pre-election spots of the political parties that took part in the National Elections of January 2015. The spots were collected from official parties' webpages, media webpages and YouTube [12]. There are fifty-six spots from thirteen parties that took part in the January 2015 National Elections, of a total of 9,692 words. Table 3 gives the language material for each of these thirteen parties. *Coalition of the Radical Left — Unitary Social Front, SYRIZA,* the political party that won the elections, is the party with the largest number of material retrieved, both in terms of number of spots, thirteen, as well as in terms of number of words, 2,276.

Table 3. – Language material for each of the political parties

political party		spots	size (words)	average spot size (words)
1	*2*	*3*	*4*	*5*
Independent Greeks	ANEL	10	503	50.3
Anticapitalist Left Cooperation for the Overthrow	ANTARSYA	1	1202	1202
Democratic Left	DIMAR	1	55	55
Union of Centrists	EK	1	143	143
Movement of Democratic Socialists	KIDISO	1	103	103
Communist Party of Greece	KKE	3	1167	389
Communist Party of Greece (Marxist–Leninist)	KKE M–L	1	201	201

1	*2*	*3*	*4*	*5*
New Democracy	ND	8	1314	164.25
Panhellenic Socialist Movement	PASOK	2	187	93.5
The river	POTAMI	10	823	82.3
Coalition of the Radical Left — Unitary Social Front	SYRIZA	13	2276	175.07
Full-Stop	TELEIA	1	259	259
Golden Dawn	XA	4	1459	364.75

Table 4. – Samples of pre-election spot material for the parliamentary political parties

Independent Greeks ANEL	<ΑΝΕΞΑΡΤΗΤΟΙ ΕΛΛΗΝΕΣ> Θάλασσες λόγκους και βουνά πουλήσαν μ' ευκολία. Σε λίγο θα πουλήσουνε κ αυτή την ιστορία. < Θάλασσες λόγκους και βουνά πουλήσαν μ' ευκολία. Σε λίγο θα πουλήσουνε κ αυτή την ιστορία.>
Union of Centrists EK	<Ο Γιώργος Μιτσηκώστας είναι λεβέντης! Εσύ;> <ΕΝΩΣΗ ΚΕΝΤΡΩΩΝ> <Πόσο σημαντικό είναι να μην ξεχνάμε πως είμαστε άνθρωποι… ακόμα κι αν έχουμε αδικήσει κάποιον να χουμε τη δύναμη
Communist Party of Greece KKE	<Τα ίδια με τους ίδιους ή τα ίδια με του άλλους;> Κυβερνήσεις ήρθαν κι έφυγαν. <Κυβερνήσεις ήρθαν κι έφυγαν> Αυτά έμειναν. <Αυτά έμειναν> Αντιλαϊκά μέτρα.
New Democracy ND	<Εμείς φτιάχνουμε το γήπεδο> – Πώς σε λένε; – Νικόλα. Να σας πω κάτι; Ο πατέρας μου μου λέει πως τα πράγματα είναι δύσκολα. – Κάτσε να τα πούμε ρε Νικόλα. Δίκιο έχει ο πατέρας σου. Όμως μερικές φορές, αν θες να φτιάξεις κάτι σωστό, περνάς μέσα από δυσκολίες. Έτσι δεν είναι;
Panhellenic Socialist Movement PASOK	Ακούστε μας. <Ακούστε μας> Σε αυτές τις εκλογές <Σε αυτές τις ΕΚΛΟΓΕΣ> Κρατάμε ψηλά την εθνική προσπάθεια και υπερασπιζόμαστε τις θυσίες των Ελλήνων.
The River POTAMI	<Εγώ είμαι το Ποτάμι> – Εγώ δεν θ'ελω να με κυβερνούν αυτοί που δεν έχουν δουλέψει ποτέ. Εγώ είμαι το ΠΟΤΑΜΙ. – Όλοι εμείς που τα συζητάμε τόσα χρόνια, που θέλαμε το καινούριο, αλλά ψηφίζαμε το παλιό, όλοι εμείς που θέλουμε μια Ελλάδα με δουλειές, δικαιοσύνη και παιδεία, εμείς είμαστε το ΠΟΤΑΜΙ.
Coalition of the Radical Left — Unitary Social Front SYRIZA	<ΣΥΡΙΖΑ ΣΥΝΑΣΠΙΣΜΟΣ ΡΙΖΟΣΠΑΣΤΙΚΗΣ ΑΡΙΣΤΕΡΑΣ> <Η ΕΛΠΙΔΑ ΕΡΧΕΤΑΙ Η ΕΛΛΑΔΑ ΠΡΟΧΩΡΑΕΙ Η ΕΥΡΩΠΗ ΑΛΛΑΖΕΙ> Αυτό που συμβαίνει τώρα είναι ότι με τον ΣΥΡΙΖΑ ενώνονται δεξιοί και αριστεροί στη βάση της ανάγκης να οικοδομήσουμε ένα μέλλον με αξιοπρέπεια.
Golden Dawn XA	<Ιδιωτική πρωτοβουλία> <ΛΑΪΚΟΣ ΣΥΝΔΕΣΜΟΣ ΧΡΥΣΗ ΑΥΓΗ> <ΑΓΩΝΙΖΟΜΑΣΤΕ ΓΙΑ ΕΘΝΙΚΗ ΑΝΕΞΑΡΤΗΣΙΑ ΠΟΛΙΤΙΚΗ ΚΑΘΑΡΣΗ ΝΑ ΜΠΟΥΝ ΣΤΗ ΝΑ ΜΠΟΥΝ ΣΤΗ ΦΥΛΑΚΗ ΟΣΟΙ ΟΔΗΓΗΣΑΝ ΤΗ ΧΩΡΑ ΣΤΟ ΧΑΟΣ> <ΚΑΤΑΓΓΕΛΙΑ ΤΟΥ ΜΝΗΜΟΝΙΟΥ>

For each spot, information regarding the type of material (oral or written), the type of the original file retrieved, the political party, the date, the source and its size in terms of number of words is kept as meta-data. Table 4 gives a sample of pre-election spots of the elected political parties: *Independent Greeks, Union of Centrists, Communist Party of Greece, New Democracy, the River, Coalition of the Radical Left — Unitary Social Front and Golden Dawn*.

There is currently a number of spots that have been manually part-of-speech tagged. The annotation includes the tagging of verbs, nouns, adjectives, adverbs and pronouns. The aim is that all of the language material of the pre-election spots will be annotated with parts of speech.

Table 5. – Samples of the political parties' pre-election discourse

Independent Greeks ANEL	Η σημερινή αποκάλυψη της εφημερίδας «Αγορά» αποδεικνύει τον απόλυτο ευτελισμό της συγκυβέρνησης Νέας Δημοκρατίας — ΠΑΣΟΚ, να ανακοινώνει 100 δόσεις στους οφειλέτες του δημοσίου.
Democractic Left DIMAR	Οι «Πράσινοι- Δημοκρατική Αριστερά» είμαστε εδώ για την κοινωνία και τη χώρα. Με ρεαλισμό και όραμα. Για την προοδευτική διακυβέρνηση της χώρας.
Movement of Democratic Socialists KIDISO	Κυρία Μπιρμπίλη, να δούμε καταρχήν τι είναι νέο και τι παλιό; Το να κατεβαίνεις στις εκλογές, την ώρα που η χώρα μας είναι μετέωρη και αποκλεισμένη από τις αγορές, με υποσχέσεις για ανεξέλεγκτες παροχές και κατάργηση φόρων, όπως κάνει η Νέα Δημοκρατία και ο ΣΥΡΙΖΑ, είναι νέο ή παλιό; Παμπάλαιο είναι. Ήταν ήδη παλιό όταν τα σινεμά πρόβαλαν τον «Μαυρογιαλούρο».
Popular Orthodox Rally LAOS	Αυτή η πολιτική αγυρτεία απέναντι στους ένστολους πρέπει να σταματήσει. Δεν μπορεί να γυρίζει την Ελλάδα και μετά να τους πετάμε στα άχρηστα γιατί έτσι ζητά η τρόικα.
New Democracy ND	Ευρώ χωρίς τήρηση δεσμεύσεων δεν μπορεί να σταθεί», συνέχισε και πρόσθεσε πως «εκείνοι που ονειρεύονται τη ματαίωση των επενδύσεων οδηγούν τη χώρα σε ατύχημα
Panhellenic Socialist Movement PASOK	Αυτή είναι η εθνική στρατηγική, αυτός είναι ο μόνος ασφαλής δρόμος. Είμαστε ένα βήμα πριν από τη συμφωνία με τους εταίρους, ένα βήμα πριν την οριστική έξοδο από το Μνημόνιο, ένα βήμα πριν τη νέα φάση της προληπτικής πιστωτικής γραμμής που είναι πολύ άνετη, που θα βοηθήσει την πραγματική οικονομία, τις επενδύσεις, την απασχόληση
Coalition of the Radical Left — Unitary Social Front SYRIZA	Το αποτέλεσμα της σημερινής διαδικασίας ήταν μια πρώτη αλλά σημαντική νίκη του λαού μας που παίρνει την πατρίδα από το χέρι για να τη βγάλει από το καθεστώς της ταπείνωσης» «η επιλογή είναι στα χέρια του λαού. Θα επιλέξει το δρόμο που μας οδήγησε στην τραγωδία και την ταπείνωση, ή θα επιλέξει το δρόμο της ελπίδας για τη μεγάλη αλλαγή.
Full-stop TELEIA	Αν κερδίσω σε αυτές τις εσωτερικές εκλογές θα συνεχίσω ως αρχηγός της Τελείας», «Θα είμαι Πρόεδρος της Τελείας μέχρι το συνέδριο, που θα γίνει μετά τις εκλογές για την εκλογή Προέδρου.
Golden Dawn XA	Το μνημονιακό καθεστώς με τη σύμπραξη όλων των κομμάτων της Βουλής κατέλυσε το Σύνταγμα και τις ελεύθερες εκλογές, κρατώντας παράνομα στη φυλακή εκλεγμένους εκπροσώπους του ελληνικού λαού. Για πρώτη φορά στην Ευρώπη οι βουλευτές της τρίτης πολιτικής δύναμης μιας χώρας παραμένουν έγκλειστοι χωρίς δικαίωμα λόγου και αποκλεισμένοι από όλα τα ΜΜΕ.

National Elections of January 25th, 2015: Pre-election political speeches

The sub-corpus of pre-election political discourse consists of language material produced by politicians of specific political parties during the pre-election action for the National Elections of January 25th, 2015. It includes material from the political parties of *Independent Greeks, Democratic*

Left, Movement of Democratic Socialists, Popular Orthodox Rally, New Democracy, Panhellenic Socialist Movement, Coalition of the Radical Left — Unitary Social Front, Full-stop and *Golden Dawn*. The language material consists of statements, interviews, speeches and articles retrieved from the official sites of the political parties or the politicians. For each speech in the sub-corpus, information regarding the speaker, the political party, the date, the type of text, the source and the size of the material is kept.

There are currently thirty-five text files of speeches and statements of Panos Kammenos, the President of *Independent Greeks*, with a total of 5,592 words, ten files for *Democratic Left* of interviews and speeches of its president Fotis Kouvelis, with a total of 964 words; ten files of interviews, articles and speeches of the President of *Movement of Democratic Socialists*, Giorgos Papandreou, of a total of 36,029 words; two files, a statement and a speech of the president of *Popular Orthodox Rally* Giorgos Karatzaferis, of 2,163 words; seventeen files of speeches and articles of the president of *New Democracy* Antonis Samaras; eight files of the *New Democracy* member of Parliament Manos Konsolas, with a total of 6,024 words, forty files of speeches, interviews and articles of the president of *Panhellenic Socialist Movement* Evaggelos Venizelos with a total of 110,996 words; thirty-one files of interviews, speeches, articles of the president of *Coalition of the Radical Left — Unitary Social Front* Alexis Tsipras with a total of 21,138 words, three files of statements of the president of *Full-stop* Apostolos Gletsos with a total of 149 words and ten files of interviews, statements, speeches and articles of the president of *Golden Dawn* Nikos Michaloliakos, with 1,359 words in total. The total size of the sub-corpus, in terms of number of words, is 184,414. Table 5 gives samples of the language material of pre-election discourse.

In the case of interviews, two files are involved: one with the whole text of the interview, both the "words" of the interviewer and the political party and one with the "words" of the politician only, so that it can be more easily processed by researchers focusing on the "words" of the politician.

Political parties' discourse

The sub-corpus of political parties' discourse is composed of language material produced by members of political parties. It consists of interviews, speeches, articles, statements, etc. The material was retrieved from publications on the personal webpages of politicians or political parties. The researchers can choose specific political parties or specific politicians for their processing. It should be noted that when the text files include language material other than the specific person's discourse, a second file has been constructed which includes the "clean" material, i. e. only the "words" produced by the specific politician. When there is a reference to the size of the corpus, this applies to the size of the "clean" language material.

Nine political parties' discourse is included in this sub-corpus: *Independent, Independent Greeks, Democratic Left, Olive Tree, Communist Party of Greece, New Democracy, Panhellenic Socialist Movement, The River* and *Coalition of the Radical Left — Unitary Social Front*. For *Independent*, there are 26 texts, all by one politician, for the period 2013–2014, with a total of 20,859 words. The language material of three politicians of *Independent Greeks* consists of 217 texts, for the period 2012–2015, with a total of 40,227 words. Regarding *Democratic Left*, there are 379 texts, of the period 2012–2015, of a total of 287,170 words. The language material of one politician of *Olive Tree* consists of 20 texts, for the period of 2010–2014, of a total of 18,394 words. The *Communist Party of Greece* political party is represented by nine politicians, with 478 texts for the period of 1998–2015 and a total of 146,043 words. Regarding *New Democracy*, twenty-nine politicians are included, with 1,692 texts and 1,631,510 words in total, for the period 2007–2015. *Panhellenic Socialist Movement* is represented with 1,036 texts, by ten politicians, for the period 1997–2015 and a total of 2,194,281 words. The *The River* political party is represented by two politicians, with 189 texts for the period 2012–2015 and a total of 449,071 words. Finally, *Coalition of the Radical Left — Unitary Social Front* is represented by thirteen politicians, with 295 texts of the period 2007–2015 and a total of 130,996 words. The sub-corpus consists of 4,332 texts with a total of 4,918,551words. Table 6 gives samples of the language material of specific politicians' discourse.

Table 6. – Samples of the language material of politicians' discourse

Terens Kouik ANEL	Σε όλους τους νομούς της Περιφέρειας, θα έχουμε ψηφοδέλτια νίκης, ψηφοδέλτια που θα εκλέξουν Βουλευτές. Σε αυτά θα μετέχουν οι γνωστοί δοκιμασμένοι αγωνιστές μας, αλλά και καινούργιοι συμπορευτές μας, που θα διευρύνουν την εκλογική μας βάση, για να ελευθερώσουμε μέσα από τις κάλπες την Ελλάδα και η επόμενη κυβέρνηση εθνικής σωτηρίας να ανακτήσει την εθνική κυριαρχία της Πατρίδας μας.
Stavros Theodorakis The River	Η κοινωνία μπορεί να υποφέρει από τους ΣΥΡΙΖΑΝΕΛ αλλά δεν νοσταλγεί το παρελθόν. Δεν θέλει να γυρίσει στις κυβερνήσεις της ΝΔ και του ΠΑΣΟΚ. Το Ποτάμι θα κατέβει αυτόνομο μαζί με τους συμμάχους του, εκτός αν καταφέρουμε να δημιουργήσουμε ένα τρίτο εκσυγχρονιστικό και μεταρρυθμιστικό πόλο. Μην μπερδευτούμε. Είναι και πρωί. Η κ. Γεννηματά ήταν υπουργός της δεξιάς. Υπουργός μίας κυβέρνησης που είχε πρώτο ρόλο η Ν. Δ. Πριν ανακαλύψουν το χάος συγκυβερνούσαν με τη ΝΔ.
Antonis Samaras ND	Είχαμε ένα πολύ γόνιμο και θετικό για τον τόπο, από πλευράς εξελίξεων, διήμερο. Θα σας κάνω μια αναλυτική ενημέρωση. Πρώτα απ` όλα, η ιδιαίτερη σημασία του βασικού θέματος που είχε αυτό το Ευρωπαϊκό Συμβούλιο, που ήταν η νέα αρχιτεκτονική της ΟΝΕ και ιδιαίτερα η σημασία της Τραπεζικής Ένωσης. Προχωρήσαμε στην ίδρυση ενός ενιαίου εποπτικού μηχανισμού, ώστε οι τράπεζες να ελέγχονται σε ευρωπαϊκό επίπεδο και κατά τρόπο συντονισμένο.
Alexis Tsipras SYRIZA	Αποτελεί πλέον κοινή παραδοχή, ότι η Ευρώπη βρίσκεται σε ένα κρίσιμο σταυροδρόμι. Η οικονομική στασιμότητα, τα προβλήματα κοινωνικής συνοχής, η έξαρση του ευρωσκεπτισκισμού και του απομονωτισμού, η ενίσχυση ακροδεξιών λαϊκιστικών φαινομένων, είναι ζητήματα που δεν μπορούμε να προσπερνάμε, σε μια σοβαρή συζήτηση για την πορεία και το μέλλον του ευρωπαϊκού οικοδομήματος. Σε μια τέτοια συζήτηση, οι ευρωμεσογειακές χώρες μπορούν και πρέπει να έχουν αυξημένο λόγο και ο τρόπος να ενισχύσουν την φωνή τους, είναι να αναζητήσουν κοινό βηματισμό και κοινές θέσεις.
Giorgos Papandreou PASOK	Μόλις ολοκληρώσαμε μια πολύ σκληρή και δύσκολη διαπραγμάτευση, αλλά θέλω να θυμίσω ότι, πριν από 18 μήνες, όταν αποκαλύφθηκε το μέγεθος του προβλήματος που είχε η χώρα μας, το οποίο ανάγκασε την κυβέρνηση της ΝΔ να φύγει, επιδοθήκαμε σε μία άνευ προηγουμένου προσπάθεια στο εσωτερικό, αλλά και μία συνεχή και σκληρή διαπραγμάτευση στο εξωτερικό, για να αποτρέψουμε αυτό που οι περισσότεροι τότε θεωρούσαν αναπόφευκτο. Δηλαδή, να μην ζήσει η χώρα μας, να μην ζήσει η ελληνική οικογένεια, τις συνέπειες μιας χρεοκοπίας.
Fofi Gennimata PASOK	Πήρα μια πρωτοβουλία πριν από λίγους μήνες, αφού είδα ότι η δημοκρατική συμπαράταξη προχωρά και πατά σε ένα στέρεο έδαφος και δώσαμε ένα χρόνο στο Ποτάμι να μπορέσει να ξεκαθαρίσει το στίγμα του. Να αποφασίσει πού ανήκει. Ανήκει στην κεντροαριστερά; Έχουμε αυτό τον κοινό στόχο να διεκδικήσουμε ένα κεντρικό ρόλο στις εξελίξεις; Ή είναι τελικά άλλες οι επιδιώξεις της ηγεσίας του;
Evaggelos Venizelos PASOK	Είναι για μένα πολύ ενθαρρυντικό το γεγονός ότι στο μέσο του Νοεμβρίου, δηλαδή στην αρχή του χειμώνα για τα δεδομένα μας, μαζευόμαστε εδώ, μια Κυριακή πρωί βροχερή, να μιλήσουμε για την πολιτική κατάσταση, για την κατάσταση στο ΠΑΣΟΚ, για το μέλλον του τόπου, και φυσικά για το μέλλον του κινήματος. Χαίρομαι γιατί βλέπω ξανά φίλους, γιατί είμαστε εδώ με το Λάζαρο, τον Ηλία, το νομάρχη, το γραμματέα της νομαρχιακής επιτροπής και όλους εσάς, στο πλαίσιο των προσυνεδριακών διαδικασιών.

Giorgos Papandreou's discourse

This is a sub-corpus consisting of political discourse by the ex-Prime Minister, Giorgos Papandreou. It consists of parliamentary speeches, other speeches, articles, press conferences, conversations, statements and interviews. More specifically, it consists of 156 interviews of more than 400,000 words (currently growing in size), 112 speeches of 310,099 words, 111 articles of 95,451 words and various other types of material, such as four conversations of 19,895 words, thirty-five statements of 7,695 words, eleven press conferences of 48,816 words and four parliamentary speeches of 13,088 words. The sub-corpus of Papandreou's discourse consists of 438 text files with a total of 896,566 words.

Table 7. – Samples of Papandreou's various types of discourse gives samples of Papandreou's various types of discourse

interviews	Πρέπει να γίνει μια διαφοροποίηση, ανάμεσα σε κάποιες πράξεις βίας, που αποτελούν μια πολύ μικρή μειοψηφία — πρόκειται για πολύ δυσάρεστα γεγονότα, που είναι όμως μεμονωμένα και δεν αντιπροσωπεύουν, με κανένα τρόπο, τις ειρηνικές διαδηλώσεις, οι οποίες είναι κατανοητές — και στο γεγονός ότι, πολύ μεγάλο ποσοστό του Ελληνικού λαού, η πλειοψηφία θα έλεγα, αντιλαμβάνονται ότι τα μέτρα αυτά είναι αναγκαία.
speeches	Πάμε μαζί. Πάμε τώρα. Τώρα είναι η ώρα. Τώρα είναι η ώρα της πιο κρίσιμης απόφασης. Τώρα αποφασίζουμε, αν θα μείνουμε αιχμάλωτοι στο παρελθόν, ή θα προχωρήσουμε στο μέλλον. Απόψε, η Αθήνα μίλησε, με τη δική σας φωνή, με αυτή την πρωτόγνωρη συγκέντρωση και το πάθος. Μιλάει όλη η Ελλάδα, όλοι οι Έλληνες, όλες οι Ελληνίδες. Και φωνάζουν δυνατά: Πάμε. Πάμε μαζί. Πάμε μπροστά.
articles	Το ΠΑΣΟΚ γεννήθηκε σε μια ιστορική στιγμή, κατά την οποία η ίδια η ελληνική κοινωνία, εξερχόμενη από τη σκοτεινή περίοδο της δικτατορίας, διψούσε να γυρίσει σελίδα στην Ιστορία της. Ήταν το 1974, όταν ο Ανδρέας Παπανδρέου ένωσε κάτω από ένα νέο πολιτικό φορέα όλες εκείνες τις κοινωνικές δυνάμεις, που επί δεκαετίες είχαν βρεθεί στο περιθώριο της κοινωνικής, της οικονομικής και της πολιτικής ζωής της χώρας.
conversations	Ευχαριστώ πολύ, Angel. Πρωτίστως, να δηλώσω ότι η Ελλάδα αναλαμβάνει και φέρει την ευθύνη να διαχειριστεί τη δική της κρίση. Θα προσέθετα, μάλιστα, ότι η Ελλάδα δεν είναι μια χώρα φτωχή. Διαθέτει τεράστιες δυνατότητες μεν, έτυχε κακοδιαχείρισης δε — και αυτό είναι ζήτημα διακυβέρνησης. Το ζήτημα είναι υψίστως πολιτικό. Αποτελεί ζήτημα δομών και θεσμών. Επικρατούσε ένα πελατειακό σύστημα, έλλειψη διαφάνειας, σπατάλη, ένας υδροκέφαλος δημόσιος τομέας, μία ανεπαρκής συνδρομή σε θέματα ανταγωνιστικότητας και ανάπτυξης και, μάλιστα, σε τομείς στους οποίους διαθέταμε συγκριτικό πλεονέκτημα.
statements	Ένας αγωνιστής, σύμβολο των αγώνων του λαού μας για ελευθερία και δημοκρατία, έφυγε σήμερα από κοντά μας. Η μακρά αγωνιστική πορεία του Γιάννη Χαραλαμπόπουλου, ξεκίνησε από το Αλβανικό Μέτωπο και τη Μέση Ανατολή, απέναντι στον φασισμό και τον ναζισμό, συνεχίστηκε με τον Ανένδοτο Αγώνα και μετά, με την αντιδικτατορική του δράση απέναντι στη χούντα των συνταγματαρχών, για την οποία διώχθηκε, βασανίστηκε και εξορίστηκε. Αγωνίστηκε μέσα από τις γραμμές του ΠΑΚ και μετείχε στις διαδικασίες για την Ίδρυση του ΠΑΣΟΚ, δίπλα στον Ανδρέα Παπανδρέου.
press conferences	Καλημέρα σας. Θα ήθελα να ξεκινήσω με μια δήλωση έκφρασης συμπαράστασης στους πλημμυροπαθείς της Εύβοιας, στους κατοίκους που δοκιμάζονται. Νομίζω, μας εκφράζει όλους μας αυτή η έκφραση συμπαράστασης. Κυρίες και κύριοι, στις 4 του Οκτώβρη, δεν συγκρούονται απλά δύο κόμματα ή δύο αρχηγοί, αλλά δύο διαφορετικές αντιλήψεις για την πορεία της χώρας. Εμείς ξέρουμε ότι η κρίση μπορεί να γίνει και ευκαιρία, να αναδείξει χρονίζοντα και μεγάλα προβλήματα, τα οποία μπορούμε και πρέπει να διορθώσουμε. Και αυτά, με σχέδιο και με αποφάσεις.

parliamentary speeches	Αγαπητοί συνάδελφοι, εδώ και 25 μήνες, έδωσα μια μάχη άνευ προηγουμένου, για να σωθεί η χώρα. Μόνος, από όλη την ηγεσία του πολιτικού συστήματος. Με πολιτική στήριξη, τις δυνάμεις του Πανελλήνιου Σοσιαλιστικού Κινήματος και της Κοινοβουλευτικής Ομάδας του ΠΑΣΟΚ. Με πραγματική στήριξη, τους πολίτες της χώρας, τον αγώνα τους, τις προσπάθειές τους. Με μια πολιτική πραγματικότητα στην Ελλάδα, ζοφερή. Με μια Αντιπολίτευση, δυστυχώς, ανεύθυνη και φυγόπονη. Και με ένα ευρύτερο κομμάτι του πολιτικού συστήματος, που το μόνο που το ενδιαφέρει εδώ και καιρό, είναι η επιβίωση του παλαιού συστήματος.

This sub-corpus, apart from the large size of discourse of a single politician, an ex-Prime Minister of Greece, boasts manual, precise and complete annotation of the language material of the interviews. More than 400,000 words regarding interviews have been manually annotated with part of speech information. The following sample is from Giorgos Papandreou's interview of the 14th of May 2011.

Δεν/Μ θα/Μ έλεγα/ΡΕ_Υ_Ε_Ε1 ότι/Σ είναι/ΡΕ_Ο_Ε_Ε3 ένα/ΑΑ πιστόλι/ΟΥ_Ο_Ε1 στον/ΑΕ κρόταφο/ΟΥ_Α_Ε3, αλλά/Σ μια/ΑΑ σκανδάλη/ΟΥ_Θ_Ε1που/Α_ΑΝθα/Μμπορούσε/ΡΕ_Υ_Ε_Ε3 να/Μ πατηθεί/ΡΕ_Υ_Ε_Ε3 εναντίον/Π ολόκληρης/ΕΘ_Θ_Ε2 της/ΑΟ χώρας/ΟΥ_Θ_Ε2, εξαιτίας/Π της/ΑΟ πραγματικής/ΕΘ_Θ_Ε2 πιθανότητας/ΟΥ_Θ_Ε2μιας/ΑΑχρεοκοπίας/ΟΥ_Θ_Ε2. Κατορθώσαμε/ΡΕ_Ο_Α_Π1 να/Μ το/ΑΟ αποφύγουμε/ΡΕ_Υ_Ε_Π1,εξοικονομώντας/ΜΤΧ_Ε λίγο/ΕΘ_Α_Ε3 χρόνο/ΟΥ_Α_Ε3 για/Π να/Μ υλοποιήσουμε/ΡΕ_Υ_Ε_Π1 τις/ΑΟ απαραίτητες/ΕΘ_Θ_Π3 αλλαγές/ΟΥ_Θ_Π3 και/Σ να/Μ γίνει/ΡΕ_Υ_Ε_Ε3 η/ΑΟ Ελλάδα/ΟΥΚΥ μια/ΑΑ σύγχρονη/ΕΘ_Θ_Ε1, αποτελεσματική/ΕΘ_Θ_Ε1και/Σβιώσιμη/ΕΘ_Θ_Ε1 οικονομία/ΟΥ_Θ_Ε1.

Conclusion

The GrePolDis Corpus is a dynamic corpus of Greek political discourse. The corpus has been built for both linguistic and political science research purposes and is the result of continuous, time-consuming work. The dynamic corpus is periodically updated with new language material. The corpus consists of both "raw", unannotated material as well as annotated with the parts of speech material. It is structured in various, dynamic sub-corpora to suit specific research needs.

As for future work, the corpus is periodically updated with new political discourse material for both politicians already in the corpus as well as new politicians. In parallel, annotation is planned for more material of the corpus aside the interviews of Giorgos Papandreou. The GrePolDis Corpus aims to be a necessary tool in the hands of both political discourse analysts and political scientists researching political discourse for communication and political purposes.

References:

1. Adolphs S. & Lin, P. – 2010. Corpus linguistics. In J. Simpson (ed.), The Routledge handbook of applied linguistics. Oxford: Routledge.
2. Γούτσος Δ. & Φραγκάκη, Γ. Εισαγωγή στη Γλωσσολογία Σωμάτων Κειμένων. Athens: Ελληνικά Ακαδημαϊκά Ηλεκτρονικά Συγγράματα και Βοηθήματα– www.kallipos.gr (in greek). – 2015.
3. Leech G. & Fligelstone S. Computers and corpus analysis. In C. S. Butler (ed.), Computers and written text, 115–40. Oxford: Basil Blackwell – 1992.
4. Lüdeling A. & Kytö M. (eds) Corpus Linguistics. An International Handbook – Vol. 1. & 2. Berlin & – New York: Mouton de Gruyer – 2008.
5. Mayaffre D. M. & Pouda C. Quantitative approaches to political discourse. In K. Fløttum (ed.) Speaking of Europe: Approaches to complexity in European political discourse, – 65–84. Amsterdam & Phildelphia: John Benjamins Publishing Company – 2013.
6. McEnery T. Corpora. In R. Mitkov (ed.), The Oxford handbook of computational linguistics, – 448–63. Oxford: Oxford University Press. – 2003.
7. O'Keeffe, A. & McCarthy, M. (eds.) The Routledge handbook of corpus linguistics. – New York: Routledge. – 2010.

8. Sinclair J. (2005) Corpus and text – basic principles. In M. Wynne (ed.) Developing LinguisticCorpora: A Guide to Good Practice, 1–16. Oxford: Oxbow books. Available online from http://ota.ox.ac.uk/documents/creating/dlc/[Accessed 2016–11–20].
9. Van Dijk T.A. (1997) What is Political discourse Analysis. Key-note address Congress Political Linguistics, Antwerp, – 7–9–December – 1995. In J. Blommaert & C. Bulcaen (eds.), Political linguistics, – 11–52. Amsterdam: Benjamins.
10. Hellenic Parliament – (2011–2016) http://www.hellenicparliament.gr
11. YouTube – (2014–2015) URL: http://www.youtube.com

Section 10. Theory and philosophy of politics, history and methodology of political science

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Forecasting as a factor of increase of efficiency of law enforcement

Abstract The article examines the nature and content of forecasting enforcement, enforcement is an important factor, as well as analyzes the features that contribute to the objective necessity of predictive maintenance to law enforcement.

Keywords: enforcement activities, forecasting, law enforcement effectiveness.

The problem of the effectiveness of enforcement activities is of great scientific and practical value, it becomes a priority in continuous updating of legislation, improvement of methods and ways of application of the law. The use of the right, as a special, specific form of the right that best embodies the purpose of law in reality reflects its purpose and nature. The right is a powerful regulator of public relations, but the regulatory process is not carried out by itself. After all, to the new law really worked, it should be implemented. It is important not just to take legal acts, but also to build a system that allows translating these instruments into practice. After all, in fact, entitled to nothing if its provisions are not found its realization in public relations.

Today is traditionally understood as the "power of the competent authorities and persons in the legal literature as enforcement activities for the preparation and adoption of individual decisions in legal proceedings on the basis of legal facts and specific legal rules» [1, 382]. Law enforcement has the tools and methods. By means of enforcement tools to understand, by means of which provides the necessary social, legal and other results, achievement of the objectives enforcer [2, 10]. Enforcement method is defined as a specific way to achieve the objectives and results of using concrete means and under appropriate conditions and prerequisites for enforcement. These tools and methods are the tools to achieve the goal — the embodiment of the right to life. Of course, the effectiveness of enforcement depends on the socio-legal validity and quality of regulation [3, 18]. Do not designed, constructed hastily rule of law leaves a wide field for "discretion" enforcer. The result is an expansive or restrictive interpretation of the content of the rule of law, which leads to the attainment of the objectives directly counter to the objective laid down in them by the legislator. Consequently, the need rigid adherence to the law enforcement objectives of the objective pursued by the legislator, only then can the effectiveness of law enforcement. It is therefore justified the position that "enforcement is a measure of the validity and truthfulness of laws. It is here that the degree of truth and verified the quality of adopted law rules [4, 86].

Legal life, the legal system of any country can not develop without the foresight of the future, without his prediction. As practice shows, the higher the level of development forecasts, than they better, and thus more authentic and more effective, the more productively legal regulation of social relations. Without the ability to foresee the course of research

and development of legal processes is not possible to ensure the stability and functioning of the legal system in general, to contribute to its painless adaptation to internal and external changes, an adequate response to the needs of legal practice.

It should be emphasized that the legal Prognostics as a relatively young discipline interbranch today is not only of academic interest. Its necessity is caused by the fact that the legal policy components (legal relationships, processes, actions) are dynamic, that is characterized by constant fluidity and variability. And one of the parameters of a stable functioning of the legal system is the predictability of the dynamics of the processes of development. To achieve this, as well as to provide competent, rational legal regulation is intended, in particular, forecasting, based on the account of known patterns and identify trends in legal development.

In the scientific literature reveals a different legal entity forecasting. Z.S Zaripov said that "forecasting — a process of scientific prediction (prediction) of predicted future state of the object based on the analysis of its past and present systematically obtain reliable information containing quantitative and qualitative characteristics of the phenomenon under study with respect to long-term period" [5, 4]. V. K. Agamirov beneath him understand "the study status and development prospects in the sphere of legal relations … society within the next historical period» [6, 8]. I. T. Tulteev gives the following definition: a system of legal forecasting tools, techniques and methods of knowledge development trends and the future state of legal processes, phenomena and institutes [6, 18]. V. S. Lomteva notes that "forecasting enforcement stage involves modelling the results of the implementation of the rule of law in a particular situation as getting social and legal effects, both positive and negative" [8, 6].

For law enforcement officials and to have scientifically based forecasts — it means to anticipate the course of events and legal action in the application of the rule of law, and thus to be able to timely respond to unwanted situations, improve management efficiency and control. Of course, in order to accurately predict the future event or other, to be able to reliably describe what can happen, you must perform a set of conditions, which is very difficult in a continuously converts the legal reality. Nevertheless, law enforcement agents must constantly strive to foresee the possible consequences of its actions and acts. VM Baranov rightly points to the need for a preliminary prediction of the law counter options as a necessary condition for its proper and effective application [9, 34].

Skilful management of law enforcement, competent implementation of the requirements of the law subjects of law enforcement, their ability to optimally organize legal actions and operations, as well as rapid, complete and adequate resolution of legal cases, the rational use of available resources and to make competent legal decisions contribute to the achievement of regulatory objectives. Of course, enforcement decisions should be prognostic ally valid, suspended, thoughtful, and legally literate and take into account all the possible consequences. To do this, it is widely used in the enforcement of legal forecasting.

If you can give the normal law-making as a rule, the degree of adequacy of the new rules of social needs detected by law enforcement. The adoption of a legal act should be preceded by scientific development and evaluation of the practice of law. To prevent possible disadvantages of the legal act can be solved in many ways, using properly processed data to law enforcement, in the course of which abstract the rule of law is correlated with real relationships, it passes "run." As an example, you can cause Resolution of the Plenum of the highest judicial authorities, in which on the basis of analysis and generalization of judicial practice enforcement issued legal decisions to be taken by the lower courts in similar situations. Thus, the decision of the plenum of the Supreme Court of the Republic of Uzbekistan N19 of 19 December 2003, explicitly called — "On application by the courts of some norms of civil procedural law" [10]. We think that one can hardly deny the predictive nature of such decisions, since they foresee and prevent possible errors of judges and urged them not to let that happen.

Law enforcement practice is the main element of the mechanism of legal regulation, "the testing" legislation for effectiveness, quality, consistency, consistency and etc. This activity of law enforcement agencies, which in the course of its activities actually faced with the existing shortcomings of law, able to

adequately assess the effectiveness of the accepted norms of law. In the course of legal practice we have developed certain ways to identify the shortcomings of legislation, which are used in the process of enforcement. These include activities of plenums of the Supreme Court and the Supreme Economic Court, which conducted the synthesis and analysis of judicial practice. The same generalization carries judiciary [11], prosecutors and law-enforcement bodies of the Republic of Uzbekistan. As a specific method for the analysis of law enforcement should also include the activities of the Institute for Monitoring of Current Legislation under the President of the Republic of Uzbekistan [12, 320].

Thus, enforcement of forecasting theory forms an independent interdisciplinary field focused on jurisprudence and a comprehensive prediction of socio-legal enforcement effect. We subscribe to the view of I.A. Tulteev and G. Tastanbekova who believe that law enforcement prediction «is a system of techniques and methods of forecasting and identification of desirable and possible consequences of ongoing law enforcement agent's application of the law.» We believe that forecasting is one of the conditions for effective law enforcement; it increases the effectiveness of law, for early detection and avoids the «failure» and other negative effects of enforcement actions. Such an approach to forecasting in the enforcement defines the conceptual meaning of the forecast enforcer thinking, his ability to make an informed, lawful, appropriate solution, characterized by symptoms such as competence, efficiency and timeliness. This approach is based on the accounting laws and the requirements of law enforcement, the ability to correctly apply them in their daily activities.

Based on what has been said, can justify the following conclusion: law enforcement decisions should be prognostically valid, suspended, thoughtful, and legally competent and the conditions and prospects of development of the legal situation. In the process of enforcement is a real life situation is superimposed on the ideal model, which is fixed in the law. The programming function allows foreseeing the legal model of the implementation of legal regulations in the process of enforcement. An example of this is the project of a settlement agreement, prepared by a lawyer in civil proceedings, which must then be approved by a judicial act (definition) [13]. Since such a document contains, in fact, a legal dispute resolution available, but also a model for future relations between the parties on the subject of the dispute, and the consequences of execution of the agreement. Hence, the draft document prepared by a lawyer, may be considered as predictive model, by which the parties to resolve disputes.

As already noted, enforcement is a cognitive evaluation and a treatment process in which the relevant rules of law applies. An important tool for predicting the effectiveness of legal solutions and debug mechanism for implementing the proposed innovations is the legal experimentation. O. H. Saidov defines the legal form of the compound experiment as legal theory and legal practice. According to him, the legal experiment is a "theoretical moment" enforcement activities while the "practical aspect" of cognitive theoretical legal process [14].

For example, the testing of the draft law "On the openness of state authority and administration", held from April to December 2013 in Bukhara and Samarkand regions, allowed in on the basis of real law enforcement to check the effectiveness of the proposed amendments to the legislation [15]. This prediction was and the principle and function of the legal experiment. As a result, during the experiment authorized representatives of state authorities of Bukhara region made about 1,500 speeches and statements on television, radio and in the press, held 67 press conferences and briefings for journalists. In the process of implementation of the legal experiment 3.5 times increase in the number of published critical articles in the print media.

Thus, the theoretical analysis of the enforcement problems enables us to state the objective need for predictive maintenance enforcement, to justify the idea that law enforcement is a component of forecasting and occupies an important place in the system of law enforcement. System analysis of the concept of "forecasting in law enforcement" allows you to understand it in three senses: as a principle inherent in law enforcement as an important function of law enforcement and how certain activities. The foregoing allows us to conclude that the predictive maintenance of law enforcement is an important factor for its validity and effectiveness.

References:

1. Теория государства и права. Учебник/Под ред. В. М. Корельского и В. Д. Перевалова. – М., – 1998.
2. Пулатова Н. С. Роль судебных актов в механизме правового регулирования (теоретико-правовые вопросы): Автореф. дис. … канд. юрид. наук. – Т., – 2011.
3. Мухаммедов Ў. Х. Ўзбекистон Республикасида қонунчиликни тизимлаштиришнинг назарий ва амалий муаммолари: Автореф. дис. … докт. юрид. наук. – Т., – 2010.
4. Тультеев И. Т. Правотворческая деятельность и прогнозирование. – Т., – 2010.
5. Зарипов З. С. Основы криминологического прогнозирования и планирования в борьбе с преступностью. – Т., – 1995. – С. 4.
6. Агамиров В. К. Прогнозирование в теории и социологии права: Автореф. дисс. … канд. юрид. наук. – М., – 1987.
7. Тультеев И. Т. Правотворческое прогнозирование: теория, методология, практика: Автореф. дисс. … докт. юрид. наук. – Т., – 2010.
8. Ломтева В. С. Прогнозирование в правотворчестве и правоприменении: Автореф. дис. … канд. юрид. наук. – Москва, – 2006.
9. Баранов В. М. Прогнозирование вариантов противодействия закону как необходимое условие его качества (технико-юридический аспект)//Правотворчество и технико-юридические проблемы формирования системы российского законодательства в условиях глобализации: Сборник статей – М.; – Новгород, – 2007.
10. Бюллетень Верховного Суда Республики – Узбекистан. – No. 4, – 2003.
11. «Аналитические материалы по итогам мониторинга за реализацией нормативно-правовых актов, направленных на совершенствование правового образования, воспитания и пропаганды в системе Министерства народного образования и Министерства высшего и среднего специального образования Республики Узбекистан»//Текущий архив Центра по мониторингу за реализацией нормативно-правовых актов при Министерстве юстиции Республики Узбекистан за – 2008 г., дело – № 6–23/12
12. Ўзбекистон Республикасининг «Таълим тўғрисида»ги Қонуни мониторинги//Масъул муҳаррир Ш. Х. Файзиев. – Т.: – 2009.
13. Гражданский процессуальный кодекс Республики Узбекистан (ст. 180).
14. Саидов А. Х. Правовой эксперимент как эффективная форма законотворческой деятельности субъектов законодательной инициативы//The central European journal of social sciences and humanities. – 2014. URL: http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-6a447a5e-d2f7–4512-b031–4ebb037d2ca6
15. URL: http://legalexperiment.uz – 23.09.2014.

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The theoretical aspects of the combination of forms of direct and representative democracy

Abstract: If the basis of classification of forms of democracy to take the way of the will of the population in the course of its participation in the management, then democracy is divided into immediate (direct) and representative. These two forms of democracy are inseparably linked with each other, they complement each other, characterized by constant interaction to the mutual influence. Originating at different times, they then become intertwined in all subsequent historical development.From now on they are inseparable from one another and it is difficult to imagine one without the other.

Keywords: Democracy, Constitution of Republic of Kazakhstan, representative democracy, direct democracy, a combination of forms of direct and representative democracy.

In his appeal on the redistribution of powers between branches of government, the President of the Republic of Kazakhstan N. A. Nazarbayev noted that the essence of the proposed reform in a serious redistribution of power and democratization of the political system as a whole [1]. In order to implement the new constitutional provisions important role played by the processes of democratic development, the combination of all its reforms.

If the basis of classification of forms of democracy to take a way of will of the population in the course of his participation in management, then democracy is subdivided into direct (directly) and representative. These two forms of democracy are inseparably linked with each other, they complement each other, characterized by constant interaction to the mutual influence. Originating at different times, they then become indispensable «fellows» of each other in all subsequent historical development. From now on they are inseparable from one another and it is difficult to imagine one without the other.

Representative democracy is the kind of democracy providing participation of the population in management not by its direct declaration of will, and by the declaration of will performed by it through the plenipotentiaries (through system representative authorities, through the President and the vertical of akims headed by it, through the Government and other executive bodies, through legal agencies, etc.). Allocating with the power of the representatives, and directly electing part of them (The president, deputies of Mazhilis and Parliament, deputies of Maslikhat) the population in subsequent is limited to general observation of how they exercise public administration, what efficiency of use of them of the provided prerogatives. On the forward plan bodies, officials, other structures which represent the people are from now on pushed. They really «manage» public administration, determine policy in the field of external relations and in the state, managements resolve general and specific issues, and are engaged in creativity, also law-enforcement

and law-enforcement activities. At the same time the status of representative democracy in the greatest measure finds expression in the organization and activities of representative bodies of the power.

During the modern period providing an optimum ratio of representative and direct democracy — one of key questions of the state and public life of the republic. Its decision allows delivering management on a scientific basis, to avoid unilaterally orientation to «hardware» activities of the state, to materialize political and social activity of people in various institutes of a form. Direct democracy in itself without democracy representative is hardly able to show fully efficiency, effectiveness, also as well as the last will be able to show the potential only in case of a combination to the first. At the same time it is desirable that not only the adjoining (adjacent) institutes of representative direct democracy were more closely combined with each other, but also — whenever possible — remotely institutes remote from each other. In this case the combination purchases multilateral complex nature, will turn into interaction of the called institutes, and their correspondence will become an everyday occurrence.

However communication of these doesn't come down to availability of the components which are general for representative and direct democracy two forms of democracy. It finds expression also that institutes of direct democracy aim to influence as appropriate formation, functioning and development of representative democracy, and the last in turn pays much attention to increase in efficiency of use of direct democracy. Let's stop on some forms of impact of direct democracy on representative bodies:

1. Such form of direct democracy as a referendum, is capable to set parameters of functioning of representative democracy, or to introduce certain amendments, amendments and changes in the existing its institutes. So it happened during the republican referendum which took place on August 30, 1995 on which the new Constitution of the Republic of Kazakhstan was accepted. According to it the former unicameral Supreme Council gave way to two-chamber parliament which status, competence and an order of activities seriously differs from the status, competence and an order of activities of the Supreme Council; besides, instead of system of local councils with their executive committees other system of local representative and executive bodies — maslikhat and akimat is created.

2. Forming of representative bodies is performed in the way uses of such institute of direct democracy as elections. Different way of forming of representative bodies, for example in the way appointments, puts them in a dependency from those bodies and official persons which appoint them. Therefore the speech shall go about enhancement institute of elections and search of its optimum model providing authentic declaration of will of the population.

3. Direct democracy, in particular its such institutes, as meetings of citizens, reports of deputies before the population, orders of voters to deputies, serves as means of involvement of citizens to activities representative bodies, allows the last to create conditions for implementations of constitutional right of citizens on participation in management public and public affairs. Institutes of direct democracies are used for providing representative bodies' primary information on public opinion and public expectations, and also for development of the state decisions taking into account needs and requirements of the population. The same should be told also about attraction the populations to control of performance of laws and other state decisions, to selection of optimum forms of organizational and managerial activities of representative institutions. In turn deep influence on a condition and functioning of direct democracy render institutes of representative democracy:

1. Representative bodies perform legislative regulation of limits of use of direct democracy, fix and specify the specific list of the questions covered by its institutes, establish the procedure and an order of functioning of each of them. Laws and other regulatory legal acts on meetings of citizens, work with orders of voters, reports of deputies before the population, an order of permission of claims, offers and petitions from citizens, a referendum, elections, etc. are that.

2. Representative bodies are urged to provide material and organizational conditions for successful functioning of institute's direct democracy. For example, during the modern period they care for recovering the fading activity of the population in the solution of questions of management, to use new and to revive some of former forms of direct democ-

racy, to coordinate their action to tasks of overcoming an economic crisis, a country conclusion to a way of forward development, to adjust instructing and methodical ensuring these processes.

3. Within the powers representative bodies exercise control of legality of functioning of institutes of direct democracy, take measures to elimination of violations. Especially often need for it arises when using by separate national groups of the right to meetings, meetings, picketing, street processions and demonstrations. The wide complex of methods of regulation and the solution of these questions is applied (allowing, notifying, etc.).

Means, it is impossible to speak about a superiority of representative unambiguously democracies over direct and vice versa. Usually exceeding direct democracy in one relation, representative democracy can yield to it in other relation. In the same way and direct democracy, being more effective in case of the solution of one question, it is less suitable in relation to other questions requiring use of institutes of representative democracy. Therefore the combination of representative and direct democracy allows compensating shortcomings by one benefit another.

Objective analysis of merits and demerits inherent in institutes representative and direct democracy, allows consciously to take measures to that

a) to some extent to promote approval of conditions for enhancement and expansion of positive sides and advantages of the called institutes,

b) whenever possible to neutralize their shortcomings and negative parties,

c) to compensate lameness of one kind of democracy advantages of other version.

Thanks to such conscious directing impact it is possible to adjust developments of democracy in the desirable party, deriving a benefit maximum from cash opportunities and avoiding many undesirable consequences and results. As the prof. V. F. Kotok fairly noted, "it is necessary to use all the best that forms of representative and direct democracy give, and as much as possible to reduce shortcomings peculiar to them. It is not about simple improvement of national representation and increase in opportunities of direct participation of masses in public administration, and about synthesis of representative and direct democracy, about connection of benefits which give both of these forms of democracy" [10].

Tracing development of representative system and direct democracy, it is possible to come to a conclusion that specific proportions of a combination of their forms don't remain invariable. On the contrary, they are mobile, dynamic and depending on a situation are exposed to adjustment and modification. For example, during the modern period in connection with huge changes in all spheres of life of society the ratio of institutes of representative and direct democracy became other, than before. It fuller is adapted for conditions of the modern period, considers present mentality of the population, feature of the state system, its priorities and tendencies of development, a form of public relations. But it can't be considered established forever and in the future most likely will undergo to new changes.

However change of proportions of a combination of representative system and direct democracy which happens nowadays or will take place in the future, doesn't shake the idea of their fixed interaction in any way. Such interaction favorably affects a condition and results of functioning both representative system, and direct democracy, enriches them, and allows developing and introducing many parties of their not dissipated potential into circulation.

Thus, reasonable and the most perspective the view of representative and direct democracies as on integrally, the kinds of the same phenomenon which are naturally connected with each other is lawful. They can't be torn off and contrasted each other in any way. During the modern period the main thing consists in rapprochement of their institutes, a combination, the complex, mutually coordinated use of their forms.

References:

1. Address of the President of the Republic of Kazakhstan concerning redistribution of powers between branches of the power. – Kazahstanskaya Pravda. – 2017. – 26th january. – № 17 (28396).
2. Kotok V. F. Problemyi razvitiya neposredstvennoy demokratii v Sovetskom gosudarstve. Avtoreferat doktorskoy dissertatsii. – Moskva. – 1965. – S.14.

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To a question of development of the administrative legislation in the Republic of Kazakhstan

Abstract: In this article is considered tendencies of development of the modern administrative legislation in the Republic of Kazakhstan. Reforming of the administrative legislation is caused by certain difficulties in practice of law-enforcement activities of the modern period of development as imperfection of the existing administrative legislation generated uncertainty on a number of questions.

Keywords: administrative legislation, reform, codification, law-enforcement activity.

Reforming of the administrative legislation is caused by certain difficulties in practice of law-enforcement activities of the modern period of development as imperfection of the existing administrative legislation generated uncertainty on a number of questions. For example, rather legal nature of the sanctions provided in various laws, presidential decrees, the orders of the Government of the Republic of Kazakhstan, and also an order of their application that, eventually, negatively affected protection of the rights and freedoms of the person and citizen, the organizations in the administrative and delictual relations.

Considering the social and economic and political transformations happening in Kazakhstan this period of development where the main idea of activities of state bodies was creation in the Republic of Kazakhstan of the constitutional and democratic state founded on market economy it is necessary to specify that in the Republic of Kazakhstan the attempt of strict implementation of rules that borders of state regulation of the developing administrative and delictual relations shall be determined strictly by a legal framework and the legislation which aim at a problem of the maximum ensuring the principle of a priority of the rights and freedoms of the person was performed.

In the context of reforming of the administrative and delictual legislation which main regulation the Code of Administrative Offences shall be noticeable lagging in its development was observed that it was connected, first of all, with difficulties of a transition period. At the same time it is necessary to specify that measures of administrative and legal coercion protect not only regulations of the administrative right, but also the regulations relating to other industries of the right. At the same time, characteristic feature of this period was also that in all spheres of the Kazakhstan legislation codification of regulatory legal acts which result was an adoption of new industry codes of the Republic of Kazakhstan was performed: civil, criminal, civil procedural, criminal procedure, criminal and executive, etc.

Adoption of the Code of the Republic of Kazakhstan about administrative offenses of May 14, 2015 became a significant event not only for the administrative and delictual legislation, but for all administrative right of Kazakhstan in general. Eloquently demonstrated the fact of implementation of its second codification which allowed to bring

a considerable standard array of the administrative and delictual legislation into accord not only with the Constitution of the Republic of Kazakhstan, but also with modern social and economic realities of the country to it.

So, in the modern administrative and delictual legislation qualitatively new approaches to a legal regulation of regularities of implementation of institute of the administrative responsibility which regularities are determined in following provisions of the Code of the Republic of Kazakhstan about administrative offenses of May 14, 2015 are allocated:

– in chapter 5 of the General part the Administrative Code of RK "The Circumstances Excluding the Administrative Responsibility";

– in chapter 8 of the General part the Administrative Code of RK "Release from the Administrative Responsibility and Administrative Punishment";

– in chapter 9 of the General part the Administrative Code of RK "Administrative Responsibility of Minors", etc.

Told demonstrates that the idea about forming of qualitatively new institute of the administrative responsibility in system of the Kazakhstan administrative law of torts by the legislator is substantially realized. And it isn't accidental as judgments of this sort visually are confirmed by the following examples.

As we stated above, the whole chapters devoted to a regulation of the called types of the public relations were published in the new Code of the Republic of Kazakhstan about administrative offenses.

Changes in political and legal reality, new approaches in rule-making, efforts of scientists in the sphere of the administrative right led to corresponding changes in an industry from the point of view of its standard and legal filling. There was a large number of own acts, and at the level of laws which existence during the Soviet period was impossible (civil service laws, ministerial procedures, appeals of physical persons and legal entities, etc.).

Further reforming of the administrative and delictual legislation of the Republic of Kazakhstan is inseparably linked with adoption of the Concept of policy of law of the Republic of Kazakhstan of September 20, 2002.

Advantage of the called Concept is that within the specified document by the legislator it is determined that "the current legislation providing functioning of a system of law of the country according to the Constitution of the Republic of Kazakhstan, the conventional principles and rules of international law requires further development, in particular, of step-by-step enhancement of current laws, and also acceptance in need of the new regulatory legal acts meeting the requirements of further democratization of society and tasks of social and economic development".

The concept also determined tasks of further enhancement of management and control and supervising activity of state bodies, departmental and judicial control of respecting the rule of law in case of application of measures of administrative and forced impact is strengthened, the system of centralized accounting and collection of penalties is created.

In the context of the ideas promoting further development of administrative law of torts, the Concept of policy of law of the Republic of Kazakhstan for 2002–2010 assumed decriminalization of individual clauses of the Criminal code due to strengthening of the administrative responsibility that formed the basis for origin and entering of many additions and changes in structure of RK operating the Administrative Code.

Emphasizing a role and value of the Concept of policy of law of the Republic of Kazakhstan accepted in 2002 it should be noted that it determined the main directions of development of a system of law of the country for the period till 2010.

In this Concept for the first time for all history of development of the administrative legislation the idea that "an important component of the administrative right is the administrative law of torts which prospects of development are connected with updating of the legislation on administrative offenses which cornerstone recognition of the constitutional regulations about the rights and freedoms of the person and citizen directly acting shall be, determining a sense, content and application of laws triumphed.

The legislation on administrative offenses shall be most directed to recovery of the violated rights, the prevention of the legal conflicts in society by administrative legal measures. At the same time when forming administrative legal sanctions the principle of their harmony of degree of public danger and to nature of an offense" shall be observed strictly.

Essentially that the called starting positions formed a basis for further forming of the new administrative and delictual legislation, and studying of practice of application of the Code of the Republic of Kazakhstan about administrative offenses, both judges, and other subjects of administrative jurisdictional activities, caused the necessity of entering of essential changes into the Code of the Republic of Kazakhstan about administrative offenses and in some other legal acts of the Republic of Kazakhstan regulating the administrative and delictual relations. The bases for this purpose were the numerous conflict moments which were characteristic of the existing administrative and delictual legislation:

– first, remained not up to the end worked out problematic issues of a ratio of regulations of the Code of the Republic of Kazakhstan of administrative offenses with other regulations of the administrative legislation;

– secondly, it was not until the end of worked a regulation about a deadline of pronouncement of the resolution on the case of an administrative offense from the moment of making of an offense. Unfortunately, it still allows its double interpretation of law enforcement by bodies. So, for example, one judges consider this term as preclusive, others carry this term only by the time of pronouncement of primary resolution on case;

– thirdly, in the Code of the Republic of Kazakhstan about administrative offenses it is necessary to make changes to individual clauses of the Special part to exclude their contradictions with other articles of the Special part and other sections, and also to provide compliance to requirements of the theory and practice;

– fourthly, there is still a question of feasibility of "binding" of the sizes of administrative penalties to minimum payments of work (MRP), etc.

Tasks of administrative production are protection of the violated or challenged rights, freedoms and interests of the person and citizen, legitimate interests of legal entities protected by the law, strengthening of legality and law and order, the prevention of offenses, and also timely, complete and objective clarification of circumstances of each case, permission it according to the Draft of this Code, ensuring execution of the passed decision.

In conclusion it is necessary to specify that processes of enhancement of administrative law of torts to be limited to those processes and actions about which we already told can't. Dynamics of the modern administrative and delictual relations demonstrates that ahead of us wait for the new researches promoting further enhancement of the administrative and delictual legislation. In this case it is necessary to agree that the Kazakhstan administrative and delictual legislation which changed within the last decade after all still will present us the new conceptual structural changes requiring the further theoretical judgment and reflection on pages of a modern legal seal.

References:

1. Administrative right: A training course/Under the editorship of R. A. Podoprigora. – Almaty: Tax expert, – 2010. – 368 p.
2. Concept of policy of law of the Republic of Kazakhstan. It is approved by the Presidential decree of the Republic of Kazakhstan of – September 20, – 2002 – No. 949. – Almaty: DEShKIS, – 2002. – 28 p.
3. Draft of the Administrative procedural code of the Republic of Kazakhstan (July, 2009). – Almaty: A charter for human rights, – 2009. – 157 p.

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Regulatory comparative analysis of amendments practice to the constitution of the state

Abstract: The purpose of this science paper is to present the regulatory — comparative analysis of the actual practice of amendments to the Constitution of the State. This study enables to determine the peculiarities of the procedure of adopting the laws on introducing amendments and additions to the Constitution of the Republic of Kazakhstan and the laws on introducing amendments and additions to the Constitutions of foreign states. The characteristics of the mentioned normative acts, historical and contemporary conditions and approaches to their adoption are given in this paper. The authors also present their thorough going assessments of the role and juridical nature of the laws adopted.

Keywords: President, Parliament, Constitution, Law, changes, amendments, modification, approaches.

In many constitutions of foreign states there are regulations of the procedure of introducing amendments and additions to the Fundamental Law (Constitution). They shall depend on the nature of the constitution — whether it is "flexible" or "rigid".

"Flexible" constitutions (Great Britain, New Zealand, etc.) are changed as ordinary laws, but other component parts of the constitutional legislation (norms of judicial precedents, constitutional customs, legal doctrines) are changed through new precedents, customs and doctrines worded by scholars — constitutionalists. The precedents and customs are changed slowly and not so frequently. Constitutional customs have been evolving for decades, even for centuries (for example, the non-use of the veto-clause by the Crown of Great Britain).

The procedure of changing "rigid" constitutions is much more complex. And among them there may be distinguished "less rigid" (e. g. the constitutions of Spain of 1978, of Kazakhstan of 1995 and that of Pakistan of 1973) and "very rigid" (e. g. the Constitution of the USA of 1787 and that of Russia of 1993).

Such method of classification is mainly based on the normative content of the constitution establishing the procedure of introducing changes and amendments. In the USA this procedure is carried out by interpreting the Constitution by the Supreme Court of the USA, in Russia — by the Constitutional Court of the Russian Federation, as well as by other ways. The introduction of Amendments to the Constitution without changing the text of it in the Russian jurisprudence has got the name "transformation or modification of the Constitution" [1, C. 30–39]. The practical importance of the problem of the transformation of the Constitution is emphasized by many foreign jurists [2; 3; 4].

In "rigid" or "hard" constitutions the norms consolidating the significant principles related to the ba-

sis of public and state systems, to the legal status of the individual and citizen, in some cases — to the procedure of introducing amendments to the Constitution, are not subject to reconsideration. The bounds of such kind of prohibitions are different. Sometimes they may be restricted by one provision which is not subject to changes and amendments (e. g. the republican form of government in France); sometimes — by two provisions (e. g. the republican form of government and multiparty system in Mauritania); very rarely by five provisions (in Brazil) and by a number of provisions (e. g. in Greece, Namibia, Portugal, Roumania).

The Constitution of the Russian Federation of 1993 prohibits to make any changes in its three chapters ("The Basis of the Constitutional System", "The Rights of the Individual and Citizen", "The Procedure of Introducing Amendments to the Constitution"). The estimation of the concepts of such prohibitions is not identical. The subject banning (for example, related to the form of government in Italy or the federal structure in Brazil) can be understood without any reference to the exact articles of the constitutions of these states, because the focus is on the principal matters of their national statehood. The prohibitions of the formal nature related to the amendments of many articles or even of the whole chapters and sections may arouse various judgements and opinions.

The restrictions in introducing of amendments and additions to the Constitutions may be of a temporary nature. Sometimes it is established while adopting the Fundamental Law (Constitution) that no changes and amendments shall be introduced within a certain period of time (e. g. during five years in the Constitutions of Greece of 1975, Portugal of 1976, Brazil of 1988). Such kind of prohibition is connected with the fact that during the first years of being in effect of the Constitution, the formation of state structures and other institutions envisaged by the Constitution shall take place. That's why to disrupt this process by introducing some kind of amendments will be premature, unless some urgent cases occur.

It is expedient that some constitutions prohibit to introduce changes and amendments to the text of the constitution under certain circumstances. For example, during imposing emergency situation or martial law in the event of a serious and immediate threat to the democratic institutions of the country (Brazil, Spain, Roumania, etc.) or in the event of the encroachment on the territorial integrity of the country (France, Guinea).

Sometimes in one and the same state amendments to the Constitution shall be introduced in several ways (for example, in France, the amendments may be introduced separately by the Parliament at the joint session of two Chambers or by the voters at an all-nation referendum). Only in a few states the supraparliament body is eligible to introduce amendments and additions to the Constitution or to the most important articles of the constitution (e. g. in Indonesia, Turkmenistan).

By no means, not all the subjects being the subjects of law of the legislative initiative shall possess the right to introduce amendments and additions to the Constitution. In Russia an individual parliament member can put forward the draft law, only a group of one-fifths of the total number of deputies from any Chamber are eligible to propose amendments and additions to the Constitution. In Benin and Mauritania such groups must be composed of one-thirds of the total number of deputies, in the Philipines — three fourths of the total number of deputies. In general, the Heads of States, Speakers of Parliament and Governments are vested with such powers. Such procedure is also in effect in Russia.

In a number of states the draft law on the amendments and additions to the Constitution may be introduced as the public legislative initiative (e. g. in Switzerland, it is necessary to have the signatures of 50 000 voters; in Austria — 100 000 voters, in Lithuania — 300 000 voters; in Italy — 500 000 signatures). In the USA the amendments and additions may be initiated by any deputy or senator (since the adoption of the US Constitution of 1787 more than 10 thousand proposals have been put forward; only 40 of them have been approved by the Congress of the USA and 27 have been ratified by the states. Thus, throughout the history of the USA, only 27 amendments and additions have been introduced to the Constitution of the USA).

Under the bicameral Parliament the Law on Introducing Amendments and Additions to the Constitution shall be adopted separately by each Chamber by the qualified majority of votes from the total number of deputies (e. g. 2/3, 3/5) — or by the consequent approval of the present law at the referendum. As it has already been mentioned, in a few states this law shall be adopted by the supra-parliament body, sometimes — at a joint session of the Chambers of Parliament (for example, in Kazakhstan, Brazil, and Mexico). In Hungary and Poland — by the majority of two — thirds of votes respectively from the total number of deputies in the presence of no less than half of deputies from the State Assembly and from the Seim. In Slovakia — no less than three-fifths of votes from the total number of deputies from the National Council. In the Czech Republic — three-fifths of votes from the total number of deputies and three- fifths from the number of the present at the session of senators. In a number of states amendments and additions shall be introduced only through an all-nation referendum (e. g. in Denmark, Egypt and the Philippines). As it is seen from the information given above, the constitutions of a number of states do not extend the list of subjects of law of the legislative initiative on the reconsideration of the Fundamental Law, do not stipulate any kind of special procedures on introducing amendments and additions to the constitutions in the counterpoise of the general legislative procedures and do not determine the possible boundaries of reconsideration by restricting only the number of votes of deputies necessary for the adoption of the relevant law.

The modification of the Constitution is possible not only by introducing certain amendments but also through the new edition of its text. The latter shall take place in the event of radical changes of living conditions of the society (e. g. in Hungary in 1990 during the transition from the totalitarian regime to the democratic system). In such cases, the amendments and additions shall be introduced to the whole text of the Constitution.

Such ways of changing the Constitution have their pluses and minuses. On the one hand, it simplifies the procedure of adapting the Constitution to the new conditions preserving its stability.

On the other hand, radical changes are carried out by the Parliament without any all-nation discussion and referendum, and it would be advisable as the new Fundamental Law is in the focus. It is known, for example, that a greater part of amendments to the Constitution of the USA have not been made by the lawmakers but through the official interpretation of the text by the Supreme Court of the USA. At the disposal of the Constitutional Court of the FRG there is such a means as "conformable interpretation", i. e. the court preserves the norms in effect, but gives them its own interpretation. Of course, in such cases the constitution is likely to be violated. It may happen so that there may occur the "rivalry" of acts with the interpreted constitutional norms. The accumulated amount of such constitutional interpretations may reach the "critical" level when it becomes possible to speak about the renewal of the constitution. That's why the interpretation of the Constitution must have certain boundaries established by the current Constitution.

The constitutional law on the introduction of amendments and additions to the Constitution, as a rule, shall not be subject to being imposed of the postponed veto by the Head of State and it must be published. Only in some countries (the Netherlands, Pakistan) the right of vetoing may be spread towards such laws as well, but in fact it has no practical applications.

Thus, the practice of introducing amendments and additions to the Fundamental Law is used in many states of the world. Amendments and additions introduced to the Constitution of the state must serve as a means of eliminating its juridical shortcomings: to make good the flaws, to eliminate contradictions, to restore the broken parity of rights and duties of the subjects of law. The constitutional amendments should be carried out in close connection of the articles which are to be amended and the articles of the Fundamental Law which are to remain unchangeable. It is necessary to forecast in due time and correctly the legal consequences of introduced amendments and additions, their influence on the current regulatory acts, as well as to foresee the economic, socio-political and cultural outcomes of the implemented juridicial innovations.

References:

1. Mityukov M. A. On the Modernization of the Constitution of the Russian Federation//Constituional development of Russia. Collection of scientific articles. Edition 4. – Saratov, – 2003. –P. 30–39.
2. Ganino M. The Russian Constitution: look from Italy//State and Law. – 1999. № 6 – P. 7.
3. Klyain H. S. Jurisdictions of the Constitutional Court//State and Law. – 1999. – № 8 – P. 15.
4. Ebzeev B. S. Interpretation of the Constitution of the Russian Federation//Constitutional Law: Textbook – M., – 1999. – P 121.

Secion 11. Criminal trial

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Formation stages of modern model of justice in the context of international standards of judicial authority realization

Abstract: The article is devoted to research of a substantial party of justice in Russia. The author conducted the analysis of the Russian model of justice regarding the compliance to the international standards of judicial authority realization.

Keywords: Court, judicial authority, judge status, judicial independence, irremovability of judges, legal status, international standards.

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Этапы формирования современной модели правосудия в контексте международных стандартов реализации судебной власти

Аннотация: Статья посвящена исследованию содержательной стороны этапов формирования современной модели правосудия в России. Произведен анализ российской модели правосудия на предмет соответствия международным стандартам реализации судебной власти.

Ключевые слова: суд, судебная власть, статус судьи, независимость судей, несменяемость судей, правовой статус, международные стандарты.

Основной чертой российской модели правосудия является высокая динамика ее развития, сопряженная с длящимся характером судебной реформы. При этом основным вектором ее

совершенствования является направленность на соответствие международным стандартам реализации судебной власти, что вполне объяснимо с токи зрения постепенной интеграции России в мировое сообщество, а также активным функционированием наднациональных судов. В этой связи научный интерес представляет анализ содержательный стороны каждого из этапов развития современной модели правосудия.

Первый этап охватывает период с 2002 по 2006 годы, когда усилия государства были направлены по большей части на повышение авторитета судебной власти, создание гарантий независимости судей, увеличение объема финансирования судебной системы, а также ее материально-техническое оснащение. Кардинальным законодательным изменениям подверглось также регулирование вопросов, связанных с правовым статусом судьи, поскольку на уровне международного права необходимость закрепления в конституциях и законах государств положения о независимости судебных органов уже имела всеобщее признание. Однако правовые реалии российского государства не могли обеспечить полномасштабную реализацию требований международных актов, декларирующих принципы отбора, назначения, несменяемости судей, прохождения службы, оплаты труда, основаниях прекращения их полномочий. Причиной тому явился кадровый голод начала 1990-х гг., который потребовал снизить уровень требований к кандидатам на должность судей, оставив такие, как 25-летний возраст, наличие высшего образования и несовершение порочащих поступков. С учетом неограниченного срока полномочий такое снижение уровня требований заставило тревожиться в отношении тех кандидатов, которым предстояло занять должность судьи впервые [1, 346]. Поэтому в Закон о статусе судей были внесены изменения, предусматривающие первоначальное избрание судей районных (городских) народных судов на пять лет (в дальнейшем этот срок был сокращен до трех лет) и последующее их переизбрание без ограничения срока полномочий.

Вместе с тем, результаты реформирования статуса судебной власти в рассматриваемый период, на наш взгляд, не всегда были однозначно позитивными. Так, например, в 2002 году были внесены радикальные изменения и дополнения в Федеральные конституционные законы «О Конституционном Суде РФ» и «О судебной системе РФ», Закон «О статусе судей в РФ», снизившие уровень правового гарантирования независимого правосудия. В частности, важнейшие гарантии статуса судей, содержащиеся в федеральных конституционных законах, были переведены в Закон о статусе судей — правовой акт меньшей юридической силы. Существенно реформировалось содержание принципа несменяемости судей — установлен предельный возраст пребывания их в должности (сначала 65 лет, затем 70 лет), для председателей судов и их заместителей установлены 6-летние сроки пребывания в должности, для впервые назначаемых судей районных судов установлен трехлетний испытательный срок, что впоследствии было распространено и на судей областных и равных им по статусу судов. Таким образом, создан опасный прецедент нестабильности правовой базы, ее изменения под определенную ситуацию или конкретных лиц. Как справедливо отмечается в юридической литературе, такие решения вызывают сожаления, и их нельзя считать прогрессивными [2, 11–12].

Решить все поставленные задачи на первом этапе судебной реформы не удалось, что обусловило необходимость принятия новой программы «Развитие судебной системы России на 2007–2012 годы». Изучение этого документа позволяет утверждать, что основной акцент второго этапа реформы был сделан на последовательном обеспечении принципа свободного доступа к правосудию. Идея беспрепятственного доступа к суду была признана международным сообществом в качестве одной из фундаментальных в 1948 г. с принятием Всеобщей декларации прав и свобод человека, закрепившей в ст. 10, что «каждый человек для определения его прав и обязанностей и для установления обоснованности предъявленного ему уголовного обвинения имеет право на основе полного равенства на то, чтобы его дело было рассмотрено гласно и с соблюдением всех требований справедливости независимым и беспристрастным судом» [3, 8]. В целях повышения доступности и эффективности правосудия в 2007–2012 годах

увеличено количество судей, динамически развивается институт мировых судей, которые рассматривают 60–70% всех дел, подсудных судам общей юрисдикции. В связи с этим были приняты поправки к действующему законодательству, которые увеличили общее число мировых судей и количество судебных участков в субъектах Российской Федерации. В результате чего уменьшилась нагрузка на мировых судей, путем увеличения их числа в ряде регионов [4, 9]. Однако, на наш взгляд, еще не до конца реализована идея, положенная в основу института мировой юстиции — приближение правосудия к населению на уровень «шаговой доступности», поскольку многие мировые судьи до сих пор размещены не на своих судебных участках, где проживает население, а в отдаленных зданиях федеральных судов. Финансирование деятельности мировых судей, осуществляемое из бюджетов субъектов РФ, не всегда отвечает реальным потребностям, а отсутствие четкого механизма поступления на участки бюджетных ассигнований существенным образом сказывается на независимости данного звена судебной системы и его эффективности.

Самостоятельным направлением второго этапа реформирования судебной системы являлось повышение открытости и прозрачности правосудия, в рамках которого введена информационная система судов общей юрисдикции — «Государственная автоматизированная система Российской Федерации «Правосудие»; созданы участки сканирования текущих судебных актов и дел постоянного хранения, сдаваемых в архив; начато формирование единой телекоммуникационной инфраструктуры для обеспечения эффективного взаимодействия всех судов общей юрисдикции. Общие бюджетные затраты на указанные мероприятия составили 260,5810 млн. рублей. На наш взгляд, второй этап реформирования судебной власти, наряду с перечисленными позитивными изменениями оставил нерешенным целый ряд проблем.

Во-первых, не была снята проблема обеспечения независимого и справедливого судебного разбирательства. По данным некоторых солидных исследований, сохраняется крайне низкий уровень доверия граждан к суду (по результатам мониторинга состояния российской судебной системы, проведенного Институтом проблем правоприменения Европейского университета, не доверяют судам 80% респондентов. По опросам Левада-центра, полностью доверяют судам лишь 2% россиян) [5].

Во-вторых, на наш взгляд, не завершен процесс судебного строительства, не получила завершения начатая модернизация судебной системы. Так, реформирована система военных судов, осуществлен комплекс мероприятий по оптимизации системы районных судов путем укрупнения судебных районов, объединения нескольких малосоставных судов в один. В результате за последние пять лет количество малосоставных судов уменьшилось на 270 судов. Вместе с тем, в специальной литературе достаточно острую дискуссию вызвали названные выше системные преобразования. Мы разделяем мнение, высказанное А. В. Гусевым о том, что сложившаяся система судов районного уровня оправдала себя многолетней практикой, она в какой-то степени приближена к населению и им востребована [6, 2], что немаловажно для реализации принципа свободного доступа к правосудию. Оптимизация бюджетных расходов посредством сокращения количества судов повлечет за собой затруднения в реализации гражданами конституционного права на судебную защиту, поскольку именно они неизбежно понесут бремя дополнительных расходов, включая транспортные, и временные издержки.

В-третьих, несмотря на отмеченное выше обновление правил судопроизводства, в ходе первых этапов судебной реформы еще не решен ряд задач, непосредственно связанных с функционированием институтов правозащитного комплекса. В этой связи в среде ученых-процессуалистов высказываются различные предложения, например, о: создании в рамках судебной системы следственного комитета как вспомогательного органа судебной власти; оставлении функции дознания за органами внутренних дел и государственной безопасности; нормативном расчленении предварительного следствия, дознания, введении для производства следствия судебных следователей; реорганизации прокуратуры, посредством введения должности прокуроров при судах; расши-

рении сферы реализации функции судебного контроля за досудебным производством [7, 20–24].

Учитывая вышеизложенное, вполне закономерным представляется принятое Президентом РФ решение о проведении следующего этапа реформирования судебной власти, ключевой целью которого стало создание государственных гарантий, направленных на обеспечение ее законного и справедливого осуществления, а также принципа доступа к правосудию. Дальнейший план реформирования судебной системы был представлен в Федеральной целевой программе «Развитие судебной системы России на 2013–2020 годы». Укрепление гарантий доступности правосудия является ядром данного документа, поскольку в качестве приоритетных направлений современного этапа судебной реформы называются: обеспечение открытости и прозрачности правосудия; повышение доверия к правосудию, в том числе за счет повышения эффективности и качества рассмотрения дел; создание необходимых условий для осуществления правосудия, обеспечение его доступности; обеспечение независимости судей; повышение уровня исполнения судебных актов.

На сегодняшний день некоторые из перечисленных в программе организационно-правовых мероприятий уже реализованы. В 2013 году произошли кардинальные изменения институционального устройства судебной власти посредством объединения Верховного Суда РФ и Высшего Арбитражного Суда РФ, что повлекло за собой внесение поправок и в Конституцию РФ, и в законы о судоустройстве. Вместе с тем, ожидаемого реформирования арбитражных судов не произошло. Закон РФ о поправке к Конституции РФ «О Верховном Суде Российской Федерации и прокуратуре Российской Федерации» не предусматривает ликвидации системы арбитражных судов, которые продолжат функционировать в качестве самостоятельной подсистемы. Несмотря на поступательную реализацию положений Программы развития судебной системы, подавляющее большинство проблем, в ней обозначенных, еще требуют своего решения на уровне законодательной и исполнительной властей.

Список литературы:

1. Правосудие в современном мире: Монография/под ред. В. М. Лебедева, Т. Я. Хабриевой. – М.: Норма, – 2012.
2. Радутная Н. Покушение на неприкосновенность судьи/Н. Радутная//Российская юстиция. – 2001. – № 12.
3. Права человека и судопроизводство. Собрание международных документов. – М.: Московская школа прав человека, – 1996.
4. Жуйков В. М. О предложении реформирования мировой юстиции в Российской Федерации путем «радикальной автономизации»//Журнал российского права. – 2015. – № 3.
5. Пшеницын О. Судебная система сегодня и завтра//СПС «КонсультантПлюс» (Дата обращения: 29.06.2016 г.).
6. Гусев А. В. Судебному департаменту при Верховном Суде Российской Федерации 15 лет//Российская юстиция – 2013. – № 3.
7. Поздняков М. Л. Каким не стать Следственному комитету России к – 2017 г. //Уголовное судопроизводство. – 2014. – № 1.

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