European Journal of Law and Political Sciences

№ 1 2016

«East West» Association for Advanced Studies and Higher Education GmbH

Vienna
2016

European Journal of Law and Political Sciences

Scientific journal

№ 1 2016

ISSN 2310-5712

Editorial office European Science Review
"East West" Association for Advanced Studies
and Higher Education GmbH, Am Gestade 1
1010 Vienna, Austria

Email: info@ew-a.org

Homepage: www.ew-a.org

European Journal of Law and Political Sciences is an international, German/English/Russian language, peer-reviewed journal. It is published bimonthly with circulation of 1000 copies.

The decisive criterion for accepting a manuscript for publication is scientific quality. All research articles published in this journal have undergone a rigorous peer review. Based on initial screening by the editors, each paper is anonymized and reviewed by at least two anonymous referees. Recommending the articles for publishing, the reviewers confirm that in their opinion the submitted article contains important or new scientific results.

Instructions for authors

Full instructions for manuscript preparation and submission can be found through the "East West" Association GmbH home page at: http://www.ew-a.org.

Material disclaimer

The opinions expressed in the conference proceedings do not necessarily reflect those of the «East West» Association for Advanced Studies and Higher Education GmbH, the editor, the editorial board, or the organization to which the authors are affiliated.

Typeset in Berling by Ziegler Buchdruckerei, Linz, Austria.
Printed by «East West» Association for Advanced Studies and Higher Education GmbH, Vienna, Austria on acid-free paper.

Section 1. Conflict of Law

Marzhan Myrzakhanova,
Kokshetau state university,
PhD in Medical science, the Faculty of Law
E-mail: myrzahanova@mail.ru

General characteristics of traditional ways to resolve legal conflicts

Abstract: Existing state law creates a special sphere — jurisdictional (legal). The rules of law regulate diverse social relations. Implementing statutory rights and obligations under those or other public relations people can enter into a conflict that could eventually develop into conflicts.

Keywords: conflict, judicial proceedings, consensual resolution of conflicts.

The diversity and conflicting interests of legal entities makes it necessary for public authorities and public institutions to bring them into balance. From traditional methods of resolving legal conflicts can be distinguished judicial and administrative proceedings [2].

Litigation is considered as a form of conflict resolution worked out by centuries of human practice. It has a number of significant advantages as compared with other procedures, such as:

• consideration of the conflict is carried out independent of other bodies, which is their purpose and the situation is not interested in the outcome of the case;

• the establishment and verification of the facts and the decision is in accordance with well-established legal norms procedure;

• decisions taken by the judicial authorities, are binding for execution directly conflicting parties, and other actors involved in a given conflict.

In Kazakhstan, there are the following types of proceedings — constitutional, civil, criminal, arbitration, administrative. They differ in the subject of legal proceedings, and in this regard, — the procedure of the case and the nature of the decisions.

Constitutional legal proceedings is regulated by the norms of constitutional law and the totality of the proceedings of the constitutional process of the relations developing between the Constitutional Council of Kazakhstan and other legal entities in the consideration and resolution of cases under its jurisdiction.

Conflicts resolved by the Constitutional Council of Kazakhstan, are very specific, as the Court monitors compliance with the Constitution, other public authorities and preserves the principles of a democratic legal state. It is authorized to resolve conflicts arising:

• between the legislative and executive bodies;

• between the government and its subjects;

• between public authorities and citizens.

In addition, the Constitutional Council shall consider the case on the relevant laws and regulations; regional, national legislation and international treaties ratified by the Republic of Kazakhstan (allows legal conflicts) [1].

The general basis for the consideration of all these conflicts is that in all cases they are linked to actual or alleged violation of the norms and principles of the Constitution RK.

By constitutional — legal procedural means of resolving the conflict should include treatment, drawn up in the form of a query, complaint, court decisions (decisions, conclusions, etc.), the definition of the legal position of the Constitutional Council, understood as his conclusions and presenting the result of interpretation of the Constitution Court Kazakhstan and other normative-legal acts, which remove the uncertainty in the specific constitutional and legal situations and serve as a legal basis for final

decisions (rulings) of the Constitutional Council of Kazakhstan.

The decision of the Constitutional Council of Kazakhstan, not subject to revision, and is required for all subjects. Consequently, the decision of the body in any case to be regarded as a formal legal basis of the legal resolution of the conflict (although this does not mean that this decision will eliminate all the contradictions that predetermined the beginning of a conflict).

Civil proceedings operates when considering property disputes, labor disputes, land, family and inheritance the court of general jurisdiction of the court or the world, depending on the jurisdiction of the case determined by the Civil Procedure Code of the Republic of Kazakhstan.

The means of conflict resolution in civil legal proceedings is an application (complaint) the interested party.

In civil proceedings the parties (the plaintiff and the defendant, which usually coincide with the conflicting parties) have equal procedural rights, which is one of the guarantees of a comprehensive review of the conflict and make a just decision. However, it is only legal equality, which, of course, not the same as actual equality.

Civil process creates quite favorable conditions for the consensual dispute resolution (settlement agreement) [3]. The amicable agreement cannot be attributed to the immediate resolution of the conflict by the participants, as it is tested and approved by the court, that is, is an act of the judiciary. It must not be contrary to law or violate someone else's rights and interests.

Court is called upon to make a legitimate and informed decision based on all materials submitted by the parties and examined their business and thus resolve the conflict in accordance with the law.

Correction possible miscarriages of justice by cassation court decision, as well as its review procedure. All this makes it possible to cause a conflict between the plaintiff and the defendant to a final and fair solution, moreover.

Criminal proceedings preceded the criminal conflict related to the commission of the crime by one or more persons. Unlike civil proceedings criminal conflict usually has already been completed before the start of the trial (the crime was committed, the accused person is detained, the preliminary investigation is complete). The task of the court is to determine whether there was in fact the criminal conflict, which served as the basis for judicial review, and guilty if it the defendant (and determine his punishment if proved his guilt) [4].

Thus, in criminal proceedings the conflict largely allowed to "force" a solution — the use of state coercion. The compromise outcome here is the exception — in cases of so-called private prosecution (beatings, insults and slander) before and during the trial, the accused may be reconciled with the victim (Article 212 Code of Criminal Procedure.).

Consequently, in the course of criminal proceedings carried out state coercion directed out to prevent opposition from the likely perpetrator of the Truth, on the other hand, to exclude illegal law enforcement pressure on a suspect (accused or defendant).

Following the review and resolution of the conflict imposed the sentence, which may be appealed to a higher authority.

Arbitration courts of Kazakhstan are specialized courts designed to resolve conflicts that arise in business activities. They accepted, and in the law, including the Constitution of the Republic of Kazakhstan and in the practice called economic disputes.

The specifics of the legal means of resolving the conflict by arbitration court is that they reflect the interests of the forms of legal entities and individuals engaged in entrepreneurial activities without forming a legal entity, state agencies, local governments, and other entities of the arbitration procedure. The result of their application should be to protect the violated and disputed rights and legitimate interests of these persons.

The means of resolution of a legal conflict is the statement of claim or statement supplied to the Court in accordance with certain rules [5; 6].

The procedure for consideration of the case by the arbitral tribunal is close to civil proceedings, however, there are differences. In particular, they should include:

1) Arbitration is often used in the procedure of pre-trial settlement of the conflict;

2) the disputing parties may transfer from arbitration any dispute (except a dispute with a public authority) to an arbitral tribunal at their discretion;

3) the arbitral tribunal shall in the proceedings to assist the parties to find a compromise.

A very significant feature permits arbitration of conflicts by the courts is that the court order the termination of the conflict is not the only one: the parties are free to use alternative means of conflict resolution. In other words, they can choose between state and non-state conflict resolution procedure. However, only the arbitration process remains the most reliable way to complete the legal dispute and ensures state support of the decision.

It should be noted that the use of judicial procedures to resolve conflicts, along with certain advantages and has a number of shortcomings:

1. The protracted nature of court cases.

2. Financial costs on (direct costs of the parties in the form of legal costs as well as indirect costs of litigation costs, that as payment of the services of experts, lawyers, etc..).

3. Unresolved conflicts (at the end of the proceedings the decision is usually made in favor of one side, then the other party remains unsatisfied. And if the court satisfies the requirements of one of the parties to the extent that both sides are dissatisfied with the result).

4. Establishing a tough conflict resolution procedures (procedural law requires strict observance of the rules of legal procedure, a deviation cannot be).

5. No judge interest in resolving the conflict.

If the legal conflict arises because of an administrative offense, its resolution is possible within the framework of administrative proceedings, which is carried out by non-judicial bodies of the state power in collegiate (for example, the conflict between the seller, violates the rules of the sale of goods legislation and Consumer Protection Committee), so and the sole (the conflict between traffic police inspector and the vehicle driver violates traffic rules) forms.

These conflicts can arise:

• at the initiative of the management side, for example, when its rights and legal interests are violated by illegal actions of officials of the authorities (this is a complaint);

• at the initiative of the management side, for example, bring cases under about bringing to the administrative responsibility of the citizen;

• between the various control entities, such as between the executive bodies of the same or different levels;

• at the initiative of law enforcement agencies, for example, contesting prosecutors act or executive authorities.

However, the order of conflict resolution is not the best, because in these cases the executive body considers citizen conflict with the same authority that allows the possibility of arbitrariness in her actions. The ancient Romans believed that no one can be judge in his own case. Therefore, in recent years it has become more widely used administrative court dispute settlement procedure [7]. The reason for this is a legal opportunity provided by the Constitution, to appeal against the actions of any public authority, local government, public associations and officials. Said means serves an important safeguard of the rights and lawful interests of the subjects of the administrative process, legality and validity of the applicable rules.

References:

1. Davydenko D. L. How to avoid litigation: mediation in business – conflicts. – M: The secret of the company, 2006.
2. The Constitution of the Republic of Kazakhstan dated September 5, 1995 (as amended on February 2, 2011). – Astana: Business World Astana, 2012. – P. 306.
3. Law of the RK from 28.01.2011 № 401 – IV «Mediation».
4. Myrzakhanova M. N., Myrzakhanov Y. N., Kuznetcov A., Tulegenov Sh. and exc. Mediation in criminal process of foreign countries and prospects for Kazakhstan. Kokshetau, 2015.
5. Romashov R. A. Conflict: a tutorial, 2006.
6. Hesl G. Mediation in conflict resolution. Theory and Technology, 2004.
7. Мырзаханова М. Н. Conflict prevention technology. Ukraina. Kiev, 2015.

Section 2. Law of obligations

Ikonomi Ergysa,
"Ismail Qemali" University, Vlorë
PhD Candidate Private Law, Faculty of Law,
University of Tirana,
E-mail: ergysa83@yahoo.com

Searching for the objective good faith in contract law

Abstract: Referring to a classical division of contractual good faith, in order to realize a full study, there are distinguished two senses of it: (1) subjective good faith and (2) objective good faith. The paper is realized as an overview of good faith in the objective sense, analyzing different legal provisions of some contractual laws. This paper aims to explain the meaning, characteristics, role and the application of objective good faith and to find and explain the differences between subjective good faith and objective good faith.

Keywords: good faith, objective good faith, subjective good faith, contract law, party behavior.

Introduction

It is now widely accepted that there is quite impossible to put Good Faith Principle inside a box. The more you try to define it, the more you understand that its dimensions are not precise. The interest about good faith lives because of its nature: deep, human, mythical, moralistic and undefined and of those extraordinary carried values, which enter the contract. Probably good faith is easier to understand as a concept, but harder to find the right words to define it. Good Faith is *quasi* undefined, but no inexplicable. Discovering its meaning, which varies depending by the specific cases, is considered the duty of lawyers, scholars and mostly of courts.

The term good faith usually is mentioned dozens of times through the provisions of civil codes of some European states. At a glance it is possible to understand that under that term lay different meanings. Rightfully authors have developed a particular way to reach the heart of contractual good faith, by identifying at least two main distinct senses: (1) subjective good faith and (2) objective good faith. Actually, this is the classical way of studying good faith, given the fact that these two concepts express ontologically different legal figures, as they have different legal functions [1].

As subjective good faith is not the prime focus of this paper, I will try to further clarify some few key issues relating to it. Subjective good faith means that a party in a legal relationship benefits law protection, when the party has been in a justified ignorance situation, despite the fact that if it were in a similar situation, but where there was no presence of good faith, the legal effects would have been unfavorable. More concretely, always depending on the specific case, it may result in the conservation of legal effects the subject has confided or the exclusion of negative effects or liability for this subject [2]. Professor Hesselink defines subjective good faith to be a subjective state of mind: not knowing or not being able to know a fact or an event [3, 620]. A person's ignorance behavior to damage legally protected state of others can be considered as subjective good faith [4, 2]. Professor Rosenberg [5, 2–3] has given another definition to describe a situation similar to what other authors have called good faith in subjective sense. He has defined this situation as "intellectual" good faith which may consist: "*either of a "passive" ignorance in a state of affairs, or of an "active" erroneous behavior",* supporting the idea that good faith protects those "*who act in error or those who suffer because of their ignorance*". However, this situation

doesn't exclude "*taking adequate precautions against such ignorance*" [6, 6].

The subjective good faith has a descriptive nature expressing the state of intelligence that is part of a situation envisaged and disciplined by law. So there is not subjective good faith which produces the legal effects, but the law. Only when the conditions provided by law are met, in this case: the presence of an intellectual state that corresponds to subjective good faith, there will be specific legal effects [1].

Objective good faith

As it is the main subject of the paper, let's put objective good faith in the spotlight. Good faith, in this sense, is often perceived as being: "*the method used to moralize contractual relationship, and to temper the inequalities that could result from the dogma of the autonomy theory*" [7, 156]. Thus, the contractual relationship should be guided by good values, avoiding the behavior which remains hostage of contractual party autonomy. This behavior should be characterized by justice, in order not to prejudice the interest of the other party in concluding a valid legal transaction [4, 3]. The objective good faith is similar to what Professor Rosenberg describes as "*intentional*" good faith [5, 2]. Good faith in this sense can be understood as: (1*) parties "loyal behavior", mainly applied to the process of the formation of the contract and of its interpretation and (2) parties cooperating honestly and loyally with each other to achieve the reciprocal aims and purposes, applied to the contract performance and the obligations regime* [8, 10].

The objective good faith is included by Brownsword in the "good faith regime" model which imposes the parties the duty to cooperate because in this way they can have common benefits and reach the goal of the agreement. Regarding the duty of cooperation, it should not be considered as absolute. The party enters a contractual relationship mainly to realize his interests, despite their nature, as long as they are legally eligible. These interests have priority. Good faith requirement does not mean that such interests are to be given less importance than the other party interests, in order to be considered in good faith. Good faith requirement does not exclude the need of "competition" between the parties.

This objective sense of good faith usually includes the duty of honesty, loyalty, fairness, disclosure and cooperation by the parties [9, 31]. This approach represents another role of objective good faith, the role which does not allow the appearance of dishonesty, fraud, concealment of information or misrepresentation.

One of the component elements of objective good faith is the honest behavior. Being a concept that carries within subjectivity it is necessary to clarify it through analyzing with care the behavior in each court case, in order to understand it. Here comes in help the doctrine of the reasonable man, whose behavior contains what is widely accepted by social morality, as honest behavior. According to Professor Corbino *honestus* man is not only the man of integrity or the one that looks like under an absolute valuation. It should be recognized as such even he who cares for his duties and does not harm to others, or who takes care of his profits [10, 123]. As a concept, honesty excludes lies and embraces virtuous and positive attributes. However, despite the remoteness from *vir bonus* concept, even a crafty person to a certain extent cannot be considered to be dishonest. Likewise, a person who seeks to affirm himself by using skills and knowledge in his possession, which give him the opportunity to prevail on those who is specifically compared to, is considered an honest person if not exceeds the tolerated limit [10, 124].

The objective good faith seems to set the standard of behavior, which imposes on the contracting parties a duty of mutual loyalty at all contractual stages; from negotiations until contract execution [2]. Professor Rosenberg, as calls it "intentional" good faith, "assigns" it three roles: (1) *honesty and loyalty required in the execution of contracts,* (2) *honesty and loyalty required in the exercise of rights and* (3) *sense of equity that the judge must employ in the interpretation of contracts* [5, 2].

Objective good faith expressed by legal provisions

So, good faith requirement itself, embodied in legal provisions, is nothing but objective good faith. As such, the behavior doesn't depend much on what the party perceives as honest, fair and right, but mostly from what is determined by the law. In fact, the law cannot foresees and describes the specific behavior. It usually appoints the boundaries within which the parties have to behave.

Through the provisions of the Albanian Civil Code it can be found the presence of the objective good faith: (1) *debtor and creditor must provide due care and be accurate in fulfilling the obligation under its terms,* [11, art. 455] (2) *parties must act in good faith towards each other during the negotiations for drafting the contract,* [11, art. 674] (3) *parties must inform each other under good faith principle during the negotiations for franchising contract conclusion,* [11, art. 1058] *the contract must be interpreted in good faith by the parties* [11, art. 682]. The Italian Civil Code provides good faith in different contractual situations: (1) *the debtor and the creditor shall behave according to rules of fairness,* [12, art. 1175] (2) *parties must behave in good faith during the pre-contractual bargaining and contract drafting,* [12, art. 1337] (3) *the contract must be interpreted in good* faith [12, art. 1366]. As the art. 455 of the Albanian Civil Code, even the art. 1175 of the Italian Civil Code must be considered not only as a vast application rule, but as the center of a constellation of norms, all inspired by the same principle [13, 285].

Different from the Albanian contract law, the Italian contract law expressly requires good faith during contract execution as provided in art. 1375. Same provision can be found in the French Civil Code, article 1134, which states that *the contracts must be performed in good faith* and even in the German Civil Code provision on contractual objective good faith which is considered laconic, although is used in a broad sense by the judges and has inspired other Civil Codes in Europe. It is one famous provision, art. 242 BGB which states that *an obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration.*

There is a similar duty of good faith provided by the Restatement (Second) of Contracts in USA which states that *every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.* [14, § 205] The similar provision in UCC, states that not only *every contract,* but even *every duty within the Code imposes an obligation of good faith in its performance and enforcement* [15, § 1–304].

Just like the UCC, even the Restatement (Second) of Contracts does not provide a requirement for good faith during the formation of contract, a type or a specific behavior of parties during negotiations. This is because Common Law systems, typically the English Law, don't accept that there is a need for good faith during the pre-contractual phase. Their laws are based on different principles as *caveat emptor* and freedom of contract and their focus is the maximization of benefits of the parties, competition supported by personal and professional skills, experience, knowledge and information. Taking advantage on the other party, this way is considered quite fair and normal. Nevertheless, bad faith, fraud and misrepresentation are subjects to liability and sanctions. In Common Law systems there are developed other doctrines and rules, such as *promissory estoppel* and *reasonableness,* which substantially are very similar to good faith, referring to their characteristics, carried values and effects. Although it cannot be said that good faith is totally excluded. There are contracts such as marine insurance contracts which is based on good faith: "*marine insurance contracts are contracts of the utmost good faith"* [16, s. 17].

Comparing to the USA trend of accepting good faith and applying it by courts, England seems to be quite slow and conservative, even though has implemented the *Council Directive 86/653/EEC on the coordination of the laws of the Member States relating to self-employed commercial agents* and the *Council Directive 93/13/EEC on Unfair Contract Terms.*

Objective good faith — subjective good faith: grounds to compare

The two senses of good faith can be found expressed in different legal provisions through contract laws, or may be laid down in the same provisions. According to Uniformal Commercial Code of USA (U. C.C.), the current definition for good faith is: "*honesty in fact and the observance of reasonable commercial standards of fair dealing*" [15, § 1–201 (20)]. This definition is a dual subjective-objective standard, as has both subjective and objective components: "*honesty in fact*" is subjective, i. e. whether the individual knew, as a factual matter, that the transaction was unauthorized; while "*reasonable commercial standards of fair dealing*" imposes an additional objective standard, i. e. whether the individual's actions were consistent with commercially reasonable standards of fairness [17, 2].

As it is quite impossible to find definitions through contract law for the two senses of contrac-

tual good faith, the content of legal provisions allows to understand and recognize them. This is generally speaking, but German contract law makes them clearly distinct, by denominating them differently such as: *"Treu und Glauben"* for objective good faith and "*Guter Glaube"* for subjective good faith. Under Dutch law, the two senses are really distinguished as "*redelijkheid en billijkheid*" for objective good faith, representing the standard by which the behavior of parties to an obligation is judged and "*goede trouw*" for objective good faith, mostly a doctrine of the property law, which means that a person is subjectively acting to the best of his knowledge or according to what he should have known [18, 192].

The two senses have not only different meaning, but even different functions and applications. Usually subjective good faith is found in the provisions relating to property expressing the state of ignorance of the party relating to the circumstances, like a title defect. On the contrary the objective good faith is found in the legal provisions relating obligations and contracts, expressing a duty of behavior for both the parties.

If he have to face the two senses it has to be said that there is accepted that good faith is presumed. This means that the person who claims the contrary or bad faith has to prove it. In fact this is true for the subjective good faith, because a person cannot be protected if he behaves clearly contrary to good faith. In the case of the objective good faith usually the presumption has not the same application.

Their nature is also different, because subjective good faith has a descriptive nature of the intellective condition, which turns back the interpreter in order to understand if the state of mind of the subject was similar to what is provided by the legal norm. The objective good faith has a normative nature, imposing the duty to behave according to a socially valuable model, in order to pursuit legal effects [1].

So the objective good faith has as referent a socially valuable behavior model which itself aims to enforce, giving it a binding nature, while the subjective good faith has as its referent a pre- existing historical situation [1].

Conclusions

As it is expressed by different legal provisions the duty of good faith, or more specifically the objective good faith is not defined. This means that there is no exhaustive list of behaviors that parties must know and perform. Each behavior must be evaluated according to its context. There lays the important task of courts. The judges should deal with each case as unique, examining the behavior according to the circumstances of the case, identifying the presence or not of the objective good faith. More likely the theory of Professor Summers [19, 200–201], which consider good faith as an "*excluder"*, would help the judges. Good faith is a phrase without an accepted general meaning on its own and it may serve as an excluder of a wide range of heterogeneous forms of bad faith. Professor Summers based this excluder qualifying of good faith precisely on judges reasoning and their used terminology: (1) *Judges sometimes write of lack of bad faith or absence of bad faith, as if it were the non-existence of something else that constitutes good faith.* (2) *When a judge uses the phrase good faith, one is frequently unable to attach a definite meaning to it without knowing what, in context, the judge means to exclude and* (3) *Even a cursory study of judicial usage reveals that the phrase is used to rule out a wide range of heterogeneous forms of conduct* [19, 201].

There is a great importance of the objective good faith in contract law. Due to its nature as a general clause it imposes a standard of behavior, which is morally and legally accepted, but also not strict and rigid. The primary duty of the parties is the fulfillment of their obligations during the formation or the execution of the contract. The objective good faith just establishes the way the parties should behave. It disciplines them. The objective good faith seems to "improve" the law, by paving the road for those important values which enter the contract law. So the contract becomes, not only a powerful tool in realizing different interests of the parties, but also a relationship characterized by a set of values highly evaluated.

The presence of objective good faith leads to a healthy contractual relationship, which more likely will result in a valid contract. This is an important result because: (1) increases mutual confidence and appreciation of the parties, (2) consequently increases the possibility for other future collaborations between them, (3) avoids disagreement between

parties, (4) avoids pre- contractual or contractual liability, which arises from the lack of good faith and (5) avoids court proceedings and arbitration and time and financial costs, arising from them.

References:

1. Uda, G. M. L'oggettività della buona fede nella esecuzione dell contratto//Diritto@storia. 2004. № 3.
2. http://www.dirittoestoria.it/3/Lavori-in-Corso/Contributi/Contributi-web/Uda-Buona-fede-contratto.htm accessed 20 February 2016.
3. Carcano. M. Sulla violazione della regola della buona fede in senso oggetivo//Altalex. 2015.
4. http://www.altalex.com/documents/news/2015/06/11/sulla-violazione-della-regola-della-buona-fede-in-senso-oggettivo#_Toc420507118 accessed 17 February 2016.
5. Hessenlink, M. W. The concept of Good Faith/Towards a European Civil Code/Eds: A. S. Hartkamp, M. W. Hesselink, E. H. Hondius, C. Mak, C. E. du Perron. Kluwer Law International; 3rd Revised Edition, 2004.
6. Pilot, M. Il risarcimento del danno conseguente alla responsabilità precontrattuale//Forum Naonis – Rivista telematica di giurisprudenza. 2006. № 6.
7. Rosenberg, G. A. The notion of Good Faith in the Civil Law of Quebec//McGill Law Journal. 1960. № 7.
8. Mackaay, E. Good Faith in Civil Law Systems- A Legal- Economic Analysis//Cirano Scientific Series 2011s. 2011. file:///C:/Users/user/Downloads/download%20chrome/SSRN-id1998924%20 (1).pdf accessed 12 February 2016.
9. European Contract Law. Materials for a Common Frame of Reference: Terminology, Guiding Principles, Model Rules/Eds: B. Fauvarque-Cosson, D. Mazeaud. Munich: Sellier, European Law Publishers. 2008.
10. Pettinelli, C. Good Faith in contract law: Two paths, two systems, the need for harmonisation//Diritto & Diritti. 2005. http://www.diritto.it/archivio/1/20772.pdf accessed 16 February 2016.
11. Chirico, F. The economic function of Good Faith in European Contract Law/Economic analysis of the DCFR: The work of the Economic Impact Group within the CoPECL network of excellence/Eds: F. Chirico, F., P. Larouche, P. Munich: Sellier, European Law Publishers GmbH. 2010.
12. Corbino, A. Fides bona contraria est fraudi e dolo. 67e Session de la Société Internationale Fernand De Visscher pour L`Histoire des Droits de L'antiquité. Salzburg, Austria, September 10-September 15, 2013. https://orbi.ulg.ac.be/bitstream/2268/169457/7/06.Corbino.pdf accessed 12 February 2016.
13. The Albanian Civil Code.
14. The Ialian Civil Code.
15. Zatti. P., Colussi, V. Lineamenti di Diritto Privato. Padova: CEDAM, Edizione IV. 1993.
16. USA Restatement (Second) of Contracts, § 205.
17. USA Uniform Commercial Code (2011), § 1–304.
18. English Marine Insurance Act, 1906, sec. 17.
19. Wilson, M. E., Kerman, J. D. What is Good Faith? Subjective and objective standards for banks accepting payment orders. http://apps.americanbar.org/buslaw/committees/CL130000pub/newsletter/201203/wilson-kerman.pdf accessed 09 February 2016.
20. Zimmermann, R., Whittaker, S. Case 1 Courgettes perishing/Good Faith in European Contract Law/Eds: R. Zimmermann, S. Whittaker. Cambridge, United Kingdom: Cambridge University Press. 2000.
21. Summers, R. S. Good Faith" in general contract law and the sales provisions of the Uniform Commercial Code//Virginia Law Review. 1968. № 54 (2) http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2408&context=facpub

Section 3. Administrative law

Balabiyev Kairat Rachimovich,
People's Friendship University
the Republic of Kazakhstan, Shymkent
Kaipbaeva Aizhan Orazymbetkyzy,
International University of Kyrgyzstan, Bishkek
E-mail: kaipmarzan@mail.ru

Reculiarity of administrative responsibility for execution of environmental crimes in the Republic of Kazakhstan

Abstract: The difficult ecological conditions arising owing to economic or other activity, lead to steady negative changes in the environment, menacing to population health, a condition of ecological systems, genetic funds of plants and animals.

Keywords: administrative responsibility, ecological offences, legislation, wetlands.

Балабиев Кайрат Рахимович,
Казахстанский инженерно-педагогический университет
Дружбы народов, г. Шымкент, Казахстан
Кайпбаева Айжан Оразымбеткызы
Международный университет Кыргызстана, г. Бишкек
E-mail: kaipmarzan@mail.ru

Особенности административной ответственности за совершение экологических правонарушений в Республике Казахстан

Аннотация: В статье рассмотрены вопросы законодательного регулирования административной ответственности при совершении экологических правонарушений, с приведением статистических данных совершенных за период 2015 года административных правонарушений в Республике Казахстан.

Ключевые слова: административная ответственность, экологические правонарушения, законодательство, водно-болотные угодья.

В качестве одного из видов экологических правонарушений ст. 319 ЭК РК выделяет административные правонарушения в области охраны окружающей среды, использования природных ресурсов. При совершении экологических правонарушений в области природоохранного законодательства вступает в действие Кодекс Республики Казахстан об административных правонарушениях (далее КоАП РК), который в соответствии с ч. 1 ст. 25 КоАП РК признает под административным правонарушением противоправное виновное (умышленное или неосторожное) действие или бездействие либо противоправное действие или бездействие юридического лица, за которое предусмотрена административная ответственность [1].

Глава 21 КоАП РК закрепляет перечень видов административных правонарушений в области охраны окружающей среды и использования природных ресурсов, в числе которых:

- нарушение санитарно-эпидемиологических и экологических требований по охране окружающей среды (ст. 324);
- невыполнение требований законодательства об обязательном проведении государственной экологической экспертизы (ст. 332);
- нарушение правил охраны водных ресурсов (ст. 358);
- незаконное строительство на водоохранных зонах и полосах водных объектов (ст. 360);
- нарушение правил ведения первичного учета вод и их использования (ст. 361);
- искажение данных учета и отчетности водных ресурсов (ст. 362);
- воспрепятствование регулированию водными ресурсами (ст. 363);
- нарушение правил общего водопользования (ст. 364);
- нарушение правил охраны мест произрастания растений и среды обитания животных, правил создания, хранения, учета и использования зоологических коллекций, а равно незаконные переселение, акклиматизация, реакклиматизация и скрещивание животных (ст. 378);
- нарушение порядка пребывания физических лиц на отдельных видах особо охраняемых природных территорий (ст. 380);
- нарушение требований пользования животным миром и правил охоты (ст. 382);
- нарушение требований законодательства в области охраны, воспроизводства и использования рыбных ресурсов и других водных животных (ст. 384);
- незаконная охота, пользование животным миром (ст. 385);
- нарушение правил проведения морских научных исследований на континентальном шельфе Республики Казахстан (ст. 393);
- представление физическими и юридическими лицами, выполняющими работы и оказывающими услуги в области охраны окружающей среды, недостоверных данных (ст. 399) и др.

Глава 46 Экологического кодекса Республики Казахстан закрепляет виды экологических правонарушений, где в числе экологических правонарушений, ст. 319 указаны:

- нарушения экологического законодательства Республики Казахстан, влекущие имущественную ответственность;
- административные правонарушения в области охраны окружающей среды, использования природных ресурсов;
- экологические преступления [2].

В Экологическом кодексе Республики Казахстан в ст.ст. 320,321,322, 323 закреплена ответственность за нарушения экологического законодательства, обязательность возмещения ущерба, нанесенного экологическим правонарушением, порядок возмещения вреда, причиненного нарушением экологического законодательства и порядок разрешения экологических споров. Закрепление видов правонарушений в области охраны окружающей среды и использования природных ресурсов предполагает наличие соответствующих мер ответственности, применяемых в отношении нарушителей указанных выше норм и конкретизированные в ст. 41 КоАП РК. Часть 1 ст. 41 КоАП РК предусматривает 9 подпунктов видов административных взысканий, применяемых к правонарушителям, являющихся физическими лицами, это:

1) предупреждение;
2) административный штраф;
3) конфискация предмета, явившегося орудием либо предметом совершения административного правонарушения, а равно имущества, полученного вследствие совершения административного правонарушения;
4) лишение специального права;
5) лишение разрешения либо приостановление его действия, а также исключение из реестра;
6) приостановление или запрещение деятельности;
7) принудительный снос незаконно возводимого или возведенного строения;
8) административный арест;
9) административное выдворение за пределы Республики Казахстан иностранца или лица без гражданства.

При этом, законодатель дает уточнение, что предупреждение, административный штраф и арест могут применяться лишь в качестве основного вида наказания. Более того в отношении юридических лиц применимыми могут быть

только вышеуказанные в подпунктах 1) — 5) и 7) административные взыскания и дополнительно к данным пунктам, приостановление или запрещение деятельности, или отдельных видов деятельности юридического лица. Следствием административной ответственности, как правило, в большинстве случаев выступают штрафы, установленные специально уполномоченными органами в отношении нарушителей экологического, водного, земельного и других видов природоохранного законодательства. В то же время наложение штрафа не освобождает виновное лицо от обязанности устранения допущенных нарушений и возмещения причиненного ущерба.

Следует признать, что штрафы, установленные для предприятий, допускающих загрязнение водных ресурсов и всей окружающей среды для нарушителей не являются угрожающей мерой, более того, по сей день действующим законодательством не предусмотрены правила и методики осуществления расчетов вреда и ущерба, нанесенного водным ресурсам, в том числе и водно-болотным угодьям, являющихся основанием для установления тех самых штрафов и привлечения к ответственности. По данным Комитета правовой статистики и специальным учетам Генеральной прокуратуры Республики Казахстан за 2015 год в государстве всего было поставлено на учет 89,087 административных правонарушений в области охраны окружающей среды и использования природных ресурсов, из них рассмотрено — 86,259 дел. По результатам рассмотрения дел было прекращено производство в отношении 221 дела и 7826 лиц привлечено к административной ответственности. Из привлеченных к ответственности лиц 104 являлись должностными лицами государственных органов, 2897 являлись юридическими лицами, 1051 индивидуальными предпринимателями и 3757 лица являлись иностранными лицами.

Диаграмма 1. Административные правонарушения

Следует отметить, что из привлеченных к административной ответственности лиц, 14308 получили предупреждение, никто не был подвергнут аресту, а в отношении 532 лиц была применена дополнительная мера ответственности, в виде конфискации. Но наиболее распространенной мерой наказания явился штраф, который был наложен на 71,720 субъектов. При этом, сумма наложенного штрафа за указанный период составила 2,629 035 732 тенге, а общая сумма причиненного государству ущерба составила 125,135 875 тенге [3, с.15].

Анализ динамики административных правонарушений в области охраны окружающей среды и использования природных ресурсов характеризуется тенденцией увеличения, что подтверждается отчетностью Комитета по правовой статистике и специальным учетам Республики Казахстан. Так, по итогам 2012 года было поставлено на учет 56,878 административных правонарушений, против 92,879 правонарушений, поставленных на учет по итогам 2013 года, против 94,958 дел, поставленных на учет в 2014 году и против 89,087 дел, поставленных на учет по результатам 2015 года.

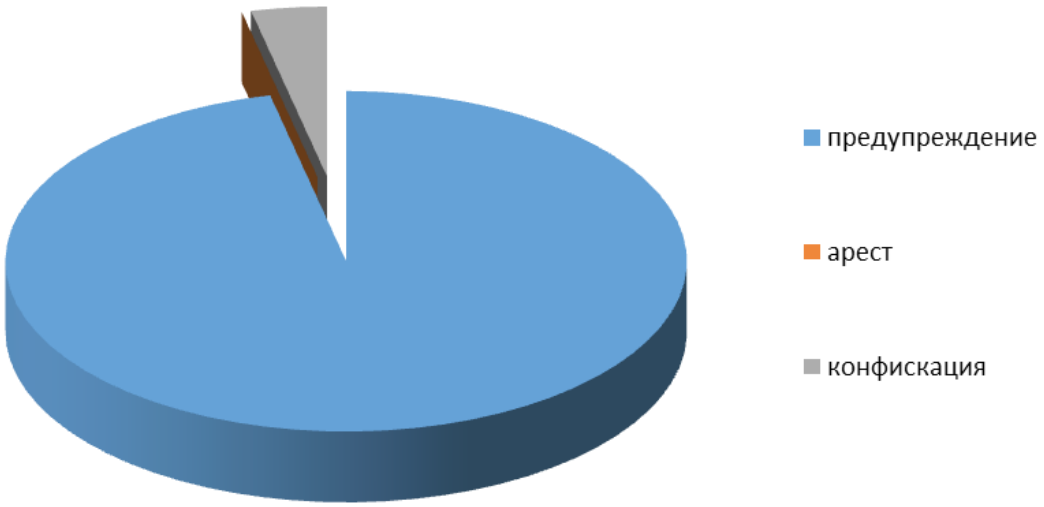

Диаграмма 2. Виды административной ответственности

Из поставленных в 2012 году на учет административных правонарушений были:

- прекращено — 168 дел;
- вынесено постановление о наложении взыскания — 56,709 дел;
- получили предупреждение — 4291 лицо;
- аресту подверглось — 20 лиц;
- конфискация применена в отношении –720 лиц;
- наложен штраф на — 52,398 лиц [3, с. 26].

В 2013 году из поставленных на учет 92,879 административных дел:

- прекращено — 121 дело;
- вынесено постановление о наложении взыскания — 92,756 дел;
- получили предупреждение — 5348 лиц;
- аресту подверглось — 33 лица;
- конфискация применена в отношении –881 лица;
- наложен штраф на — 87,374 лиц [4, с. 26].

В 2014 году:

- прекращено — 229 дел;
- вынесено постановление о наложении взыскания — 94,658 дел;
- получили предупреждение — 5419 лиц;
- аресту подверглось — 22 лица;
- конфискация применена в отношении –943 лиц;
- наложен штраф на — 89,307 лиц [4, с. 24].

По итогам 2015 года:

- прекращено — 221 дел;
- вынесено постановление о наложении взыскания — 86,028 дел;
- получили предупреждение — 14,308 лиц;
- аресту никто не подвергся;
- конфискация применена в отношении — 532 лиц;
- наложен штраф на — 71,720 лиц [4, с. 29].

В последнее время особой популярностью пользуются предложения о необходимости применения не пресекающих мер административного воздействия, распространенных в экономически развитых странах, среди которых следует выделить поощрения соблюдения установленных требований, предоставление возможности исправления нарушенных требований, в том числе по природоохранному законодательству и т. д., без наложения административных взысканий или применения мер административного воздействия, при условии добровольного устранения допущенных нарушений. Однако, в отношении Республики Казахстан допустимость применения вышеуказанных мер, с нашей точки зрения преждевременна в результате чего наиболее эффективным методом остаются меры финансовых ограничений и лишений для нарушителей, представленных в виде штрафов. Следует признать наличие существенных недостатков, вызванных несовершенством некоторых норм КоАП РК, что существенно затрудняет работу специалистов. В результате чего наиболее эффективным методом остаются меры финансовых ограничений и лишений для нарушителей, представленных в виде штрафов. В отношении вопроса правового обеспечения охраны водно-болотных угодий мерами административного воздействия

следует признать наличие существенных недостатков, вызванных несовершенством некоторых норм КоАП РК. Так, многочисленные изменения и дополнения, вносимые в КоАП РК не могли оказать не только положительного, но и отрицательного влияния, выражающихся в рассредоточении и ссылке на множества норм, статей, что существенно затрудняет работу специалистов, не говоря уже о простых гражданах.

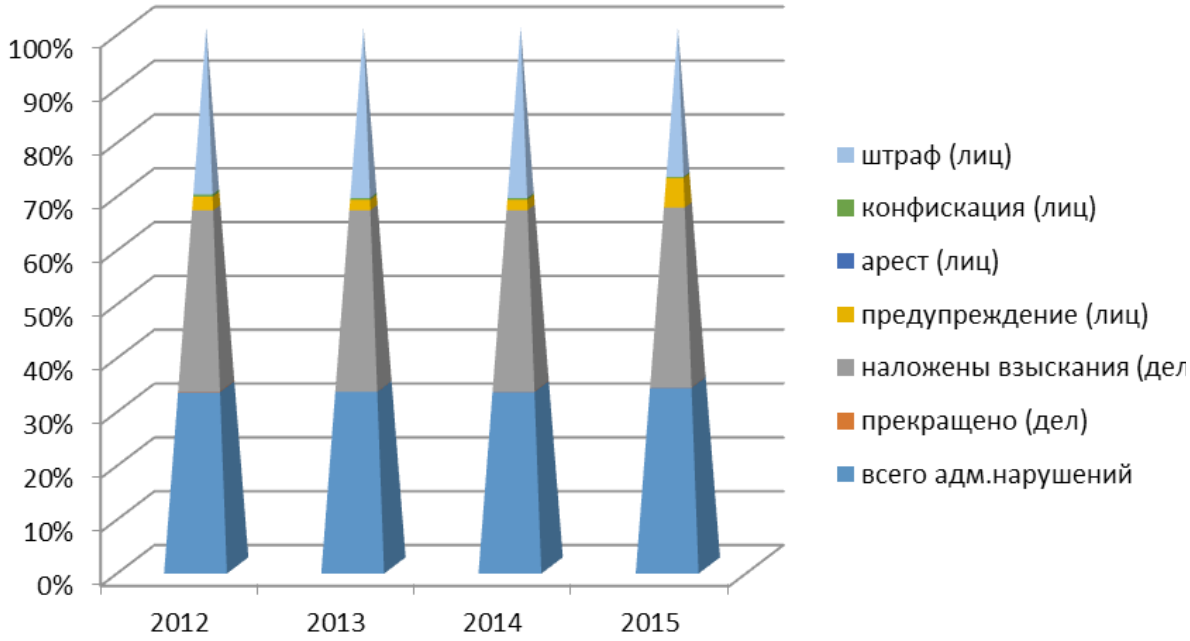

Диаграмма 3. Диаграмма сравнительных данных административных правонарушений в государстве за период с 2012 по первое полугодие 2015 гг.

В результате вышесказанного мы считаем, что для начала необходимо провести анализ имеющейся нормативной документации, регулирующей в той или иной степени отношения, возникающие по поводу водно-болотных угодий, затем необходимо провести оценку данных документов, с целью выявления степени влияния, оказываемого ими на водно-болотные угодья. По окончании пересмотра действующего законодательства и выявления пробелов, следует приступить к разработке рекомендаций по внесению изменений и дополнений в действующее законодательство. Конечно, разработка и последующее внесение изменений и дополнений в действующее административное законодательство по поводу водно-болотных угодий, обеспечения их рационального использования и охраны потребует значительных затрат сил и средств и будет требовать проведения целого комплекса предварительных мероприятий, начиная с исследовательской деятельности, однако результат может превзойти все затраты.

Список литературы:

1. Кодекс об административных правонарушениях Республики Казахстан от 5 июля 2014 года № 235-V//Казахстанская правда. – 2014. – 12 июля.
2. Экологический кодекс Республики Казахстан от 9 января 2007 года № 212-III//Казахстанская правда. – 2007. – 23 января//Казахстанская правда. – 2012. – 29 декабря.
3. О результатах рассмотрения уполномоченными органами дел об административных правонарушениях за 12 месяцев 2015 года Комитета по правовой статистике и специальным учетам Генеральной прокуратуры РК//www. pravstat.kz.
4. О результатах рассмотрения уполномоченными органами дел об административных правонарушениях за 12 месяцев 2013 года Комитета по правовой статистике и специальным учетам Жамбылской области//www.pravstat.kz.

Horodetska Irina Albinovna,
Nizhyn Gogol State University,
Candidate of Law Sciences, Associate Professor,
Department of Political Science and Law
E-mail: *gorodetska-fox@rambler.ru*

To the problem of understanding of the purpose of administrative-legal regulation

Abstract: In this article the analysis of major scientific approaches to understanding the purpose of legal and administrative-legal regulation, and, as a consequence, the definition of the latter are displayed.

Keywords: The approach, purpose, legal regulation, administrative-legal regulation, public relations.

Introduction

In Ukraine's modern conditions in the context of deepening euro integration processes, the transformation of social relations constituting the subject-matter of administrative law, particular importance has the strengthening of administrative and legal protection of the rights and freedoms of citizens. So, the study of a broad range of issues related to such legal category as administrative and legal regulation is topical. One of the essential characteristics of the latter is the goal of administrative-legal regulation.

The diversity of views that exist in theory of law regarding the category of legal regulation generally, and of administrative-legal regulation in particular [1, 11–12; 2, 18], leads to, respectively, the various approaches to the understanding of the purpose of legal regulation.

The aim of the article is the analysis of major scientific approaches to understanding the purpose of legal and administrative-legal regulation and the definition of the latter.

The term "purpose" is treated in the dictionary of the Ukrainian language as follows: "what someone wants, what they want to achieve; the goal" [3, 683]. In the philosophical encyclopedic dictionary the goal is understood as «one of the elements of behavior and conscious activity of man, which characterizes the anticipation in thinking of activities and ways for its implementation with the help of certain tools» [4, 763]. In the juridical literature there are various approaches to understanding the purpose of legal regulation.

In the vast majority of cases under the purpose of legal regulation is meant keeping the social relations in order [5, 103; 6, 32]. There are opinions that the purpose of the legal regulation are anticipated and desirable for the law-making body results of the implementation of the law [7, 158], the implementation of legal regulations [8, 30], the establishment of this order in public life, which would satisfy the requirements of the legal norms laid down in the principles of social justice [9, 46]. However, given the general understanding of legal regulation, as the impact of the law on social relations, in the above-mentioned approaches to understanding the purpose of regulation is certain tautology — regulation for regulation [10, 61], which indicates the self-contained nature of the legal regulation that is not correct, as the latter is carried out to achieve a certain socially significant purpose.

O. Skakun understands the purpose of legal regulation of social relations, as the obtaining of predictable and desirable for the creator of legal norms results (regulation of social relations, their consolidation, security, protection and development) [11, 255]. Close to this position is the view of O. Melnik, who believes that the aim of legal regulation is the streamlining, consolidation, protection and development of public relations [12, 30].

Understanding of the purpose of the legal regulation of such scientists as S. Alekseev, T. Andrusyak, I. Shopina is also revealed through the prism of social relations in the context of their origin, regulation, development, protection, consolidation,

but more widely, namely considering an approach that takes into account the elucidation of needs (interests) of certain subjects of society.

In particular, when defining the objectives of legal regulation S. Alekseev focuses on societal needs [13, 209], T. Andrusyak — national and civil needs and interests [14, 143], I. Shopina — international, national, state, community, group or individual needs and interests [10, 65]. This approach, in our opinion, allows comprehending the essence of purpose of legal regulation, because it is indisputable that the latter is determined by its needs, which, in turn, conditioned by the social environment in the unity of all factors in social life — economic, political, legal, socio-cultural, and the like.

In this context, it should be noted that in a number of scientific works, considerable attention is given to the problems of legal necessity, and, consequently, specific legal purpose. The latest in the juridical literature were studied by such scientists as A. Ekimov, V. Kazymyrchuk, D. Kerimov, O. Malko, V. Mukhina, T. Pashuk, P. Rabinovich, L. Chulyukin, K. Shundicov, I. Shopina and others. Thus, there are legal and non-legal purpose of the regulation (V. Kazymyrchuk, V. Mukhina), or financial and legal objectives of the law (V. Nikitinsky, I. Samoshchenko).

In turn, T. Pashuk pays attention to that, that intent which is stated in the legislation can be a legal only by the form (determined by non-legal need of the subject — biological, personal, economic, cultural or other) and legal by the form and content (determined by the legal need of the subject) [15, 92]. However, it is necessary to agree with I. Shopina, who notes that the objectives of legal regulation may not be purely legal, as the right exists to optimize the functioning of society, and not vice versa [10, 64]. While not denying the existence of both illegal and legal (legal) purpose, it should be noted that this division is relative and should be based on an understanding of rights not only as of a normative regulator, but also as of a tool in achieving social objectives.

The research of administrative-legal regulation is based on the original theoretical positions regarding the understanding of the complex legal phenomenon — legal regulation. However, given the specificity of subject matter and method of administrative law, the essential characteristics of administrative-legal regulation, including the purpose, have their own features.

Figuring out the issues and problems of understanding of the purpose of administrative-legal regulation, it is worth noting some differences in points of view. According to one, the main emphasis of researchers (K. Afanasyev, V. Kolpakov, O. Kuzmenko), in determining the purpose of administrative-legal regulation is focused on ensuring the security and protection of the rights and freedoms of man and citizen by the state, which, in our opinion, was justified in the context of the orientation of modern administrative lawmaking and law-applying in the service of the state to the interests of the individual.

In particular, the purpose of administrative-legal regulation, according to scientists, are: the establishment and regulation of the relationship, which must guarantee every person the actual respect and protection in the sphere of Executive power of rights and freedoms that belong to it, as well as effective protection of these rights and freedoms in case of their violation [16, 3], improvement of forms and methods of management activity, the establishment and regulation of such relations between citizens and state institutions, in which every person must be guaranteed effective implementation and protection of rights and freedoms, as well as effective protection of these rights and freedoms in cases of their violation [17, 3].

The same position is also held by such the experts of administrative law, as V. Halunko, Y. Hrydasov, O. Yaeschuk A. Ivanyschuk, S. Koroyed, V. Olefir, but they pay attention to such substantial aspect of purpose of administrative-legal regulation as the provision of public interest that, in our opinion, in the context of using an approach that considers clarification of the needs (interests) of different subjects of society, promotes the disclosure of the nature of the considered concepts. So, the purpose of administrative-legal regulation, according to scientists, is providing the rights, liberties and public legal interests of natural and legal persons, the normal functioning of civil society and the state [18; 19, 324].

Another approach of scientists to understanding the purpose of administrative-legal regulation is in discovering the latter in the light of social relations

constituting the subject-matter of administrative law, specifically, their security, protection, updates and improvements. A number of factors, in particular, the dynamism of the substantive scope of administrative law, different views of scientists on it, rethinking of the traditional view on the subject of administrative law in connection with the democratic transformations in Ukraine by scientific community, respectively, determine the existence of a few differing positions in relation to the understanding purpose of administrative-legal regulation.

So, the methodological basis in determination the purpose of administrative-legal regulation for some scientists is the classification of relations within the subject of administrative law. In particular, I. Shopina formulated a position, according to which the goal of administrative-legal regulation includes: a) security, protection and recovery (in case of their violation) of the rights and freedoms of individuals and legal entities in their relations with bodies of Executive power and bodies of local self-government, their officials; b) improving the system of state management of economic, socio-cultural and administrative-political spheres, as well as the implementation of Executive powers delegated by the state to local governments, public organizations and some other non-state institutions; c) improvement of processes of internal organization and work of apparatuses of all public bodies and the execution of public service [10, 67]. This approach is characterized by complexity, because it takes into account the aspect of security and protection of the rights and freedoms of man and citizen and details the substantive scope of administrative-legal regulation.

In addition, there is an approach to understanding the purpose of administrative-legal regulation, which is based on accounting for the multi-purpose nature of regulatory activity (G. Atamanchuk, V. Vishnevska, N. Nizhnik, O. Suslov, L. Yuzkov and others). Despite the multitude of classification criteria used for division purposes on different types, the scientists who are trying to build a «tree» of goal, unanimous on the need for correlation of subgoals with the model of the main overall objective and specific values. Such an approach, taking into account the concretizing character, is mainly used in branch researches.

The analysis of many scientific papers, which are devoted to the problems of administrative-legal regulation of certain social relations, demonstrates the use of the approaches mentioned above or their different combinations (actualization on key issues) in determining the purpose of administrative-legal regulation of a branch researches. And this is logical, because an attempt to enrich the understanding of any phenomena of legal reality by integrating their essential characteristics only contributes to the further development of legal science.

Conclusions

Thus, taking into account the positive aspects of considered approaches to understanding the purpose of regulation and administrative-legal regulation makes it possible to formulate the following provision.

The purpose of administrative-legal regulation — is determined by social need ideal model of desired result of the effective functioning of social relations that are or have the potential to be included to the subject of administrative law and aimed at ensuring the rights, freedoms and public interests of participants of these relations.

References:

1. Тарахонич Т. І. Правове регулювання та правовий вплив як юридичні категорії: співвідношення понять/Т. І. Тарахонич//Часопис Київського університету права. – 2009. – № 4.
2. Городецька І. А. Предмет правового регулювання: окремі аспекти/І. А. Городецька//Науковий вісник Херсонського державного університету. – Херсон: Видавничий дім «Гельветика», 2014. – (Серія: Юридичні науки; вип. 3, т. 1).
3. Словник української мови: в 11 томах. – Том 4, 1973.
4. Философский энциклопедический словарь [гл. ред.: Л. Ф. Ильичев, П. Н. Федосеев, С. М. Ковалев, В. Г. Панов]. – М.: Сов. энциклопедия, 1983.
5. Волинка К. Г. Теорія держави і права: навч. посіб. – К.: МАУП, 2003.

6. Соловйов В. М. Поняття і сутність правового регулювання державного управління України/В. М. Соловйов//Університетські наукові записки. – 2007. – № 3 (23).
7. Рабінович П. М. Основи загальної теорії права та держави. Видання 5-те, зі змінами. Навчальний посібник. – К.: Атіка. – 2001.
8. Лазарев В. В. Правомерное поведение как объект юридического исследования/В. В. Лазарев//Советское государство и право. – 1976. – № 10.
9. Капітанська С. А. Правомірна бездіяльність як форма правової поведінки: дис. … канд. юрид. наук: 12.00.01/Капітанська Сніжана Анатоліївна. – К., 2005.
10. Шопіна І. М. Адміністративно-правове регулювання управління органами внутрішніх справ України: дис. … д-ра. юрид. наук: 12.00.07/Шопіна Ірина Миколаївна. – К., 2012.
11. Скакун О. Ф. Теорія держави і права: підруч. – 4-те видання допов. і перероб. – К.: Алерта, 2013.
12. Мельник О. М. Правове регулювання та шляхи підвищення його ефективності: дис. … канд. юрид. наук: 12.00.01/Мельник Олена Миколаївна. – К., 2004.
13. Алексеев С. С. Теория права. – М.: БЕК, 1995.
14. Андрусяк Т. Г. Теорія держави і права/Т. Г. Андрусяк – Львів: Право для України, 1997.
15. Пашук Т. І. Соціально-філософські засади концепції юридичних засобів/Т. І. Пашук//Проблеми філософії права. – 2005. – Т. 3. – № 1–2.
16. Колпаков В. К. Адміністративне право України: підруч./В. К. Колпаков, О. В. Кузьменко – К.: Юрінком Інтер, 2003.
17. Афанасьєв К. К. Адміністративний договір як форма державного управління (теоретико-правовий аспект): автореф. дис. на здобуття наук. ступеня канд. юрид. наук: спец. 12.00.07 „Теорія управління; адміністративне право і процес; фінансове право"/К. К. Афанасьєв. – Луганськ, 2002.
18. Галунько В. В. Поняття та зміст адміністративно-правового регулювання: [Електронний ресурс]/В. В. Галунько, О. М. Єщук//Actual problems of corruption prevention and counteraction. – 2011. – Режим доступу: http://www.law-property.in.ua
19. Адміністративне право України: у 2-х т.: підручник Т. 1: Загальне адміністративне право. Академічний курс/В. В. Галунько, В. І. Олефір, Ю. В. Гридасов, А. А. Іванищук, С. О. Короєд. – Херсон: ХМД, 2013.

Mataj Rezarta,
Judge at Tirana District Court
PhD. Candidate at the University of Tirana, Faculty of Law
Facilitator in the continuous program of judges at the Magistrates School.
Part-time lecturer at the University of Tirana, Faculty of Law
Email: rezimataj@yahoo.com

Entities of extra-contractual responsibility of public administration in Albania

Abstract: The responsibility of the public administration towards its citizens is a new phenomenon, mainly emerging in the world in early 19th century until the 20th century. In Albania, this kind of responsibility has not fully developed yet, as shown by the judicial practice on such claims.

Article 44 of the Constitution of the Republic of Albania (1998) stipulates that: "Everyone has the right to be rehabilitated and/or indemnified in compliance with the law, if he has been harmed by an unlawful act, action or failure to act on the part of state authorities." When analyzing its elements, we can state that the concept of responsibility that awarded to its bodies by the Constitution does not

apply solely to public administration authorities, but also to any other state body whose actions can bring about responsibility in others. This directly applies to the public administration, regulated in Albania by law no. 8510/1999 "On extra-contractual responsibility of public administration bodies". In its broader sense, it also applies to public administration bodies and their employees, stipulated by Article 14 of the Administrative Procedure (principle of responsibility).

It is of particular importance to study the circle of the entity and the scope of extra-contractual responsibility of public administration, and theoretically identify the entities subject to administrative responsibility in relation to citizens concerning the damage, exempted entities, the competent courts for such cases, etc.

Keywords: state liability, public administration bodies, injured person, Albania Civil Code, remedies.

Introduction

The concept of extra-contractual responsibility of the state or public administration in Albania is narrower than the equivalent concepts around the world, which include the administrative responsibility of the state, the civil responsibility of public bodies, governmental responsibility, state's responsibility for extra-contractual damage, etc. It is however important that Albania, just like numerous democratic countries, has joined the group of states where responsibility is held for actions or failures to act on the part ofstate authorities.

According to the Dictionary of Albanian Language, the word responsibility means someone's obligation to be accountable for himself or something, whereas the personresponsible is the one who is held accountable for something [1, 788].

Parties in the administration responsible for extra-contractual damage

1. Is there a difference between bodies of public and state administration?

The Constitution [2], the Code of Administrative Procedures [3] and the special law no.8510/1999 regulating this type of responsibility [4], do not provide a clear description of the term public or state administration, or public and state body, with both concepts found by mistake or deliberately in the texts of the above mentioned laws [5] The scholars of administrative law are clear about the fact that the first concept, public administration, is broader and entails state administration too. Thus, a state administrative body is part of a public administrative body, but the opposite is not necessarily true. The aim of the legislator is not to make distinctions. Assoc. Prof. Sokol Sadushi makes the following distinction: *"The notion of public administration is broader than the notion of state administration because in addition to the activities of the state administration, it also includes the activities of the relevant institutions which do not have an express character of state bodies but they carry out activities of public character."* [6, 15].

Prof. Esat Stavileci, in the dictionary of administrative terms, considers the unification of administrative terms in Albanian as essential and these terms are often confused due to improper understanding of their meaning, the influence of foreign languages, etc. [7, 123]. Thus, Prof. Stavileci defines public administration as the totality of activities conducted by the public administration and the institutions of the public administration, whose goal is the general interest. It applies not only to state administration bodies, but also to other bodies and organizations conducting administrative activities [7, pg. 23]. In addition to this distinction, this dictionary also distinguishes between bodies of state and public administration. The former is defined as "*body of state power competences, expressed in its rights and duties to issue administrative acts with which the will of state power is manifested and it protects and applies laws against any violation and it uses coercive power.*" [7, pg. 133]. Public administration bodies are defined as: "*bodies of public central and local administration and other depending bodies*". [7, pg. 136].

A more clear distinction between state administration and its bodies is provided by law no. 90/2012 "On the organization and operation of the state administration" with Article two stipulating that: "*1. The state administration is the organizational and professional apparatus that impartially serves the public interest, implementing the existing legislation, performing*

*public services, drafting and implementing the general state policies".*Article 4 § 2 of this law specifies that the state administration includes the following institutions:

a) The prime ministry, also known as a senior body of the state administration;

b) Ministries, also known as a senior body of the state administration;

c) institutionssubordinate to the Prime Minister or the respective ministers, including: a) secretary general; b) general directorates; c) directorates; ç) sectors etc.

ç) direct units of services provision;

d) autonomous agencies;

dh) the prefect's administration.

The New Code of Administrative Procedures, approved by law no. 44/2015 [8] and thus repealing the current Code of Administrative Procedures (1999) does not refer to bodies of public administration but provides the general concept of the public body, which Article 3§ 6 defines as: *"every body of central power performing administrative functions, every body of public entities, to the extent they exercise administrative functions, the bodies of local power exercising administrative functions, the bodies of Armed Forces, as long as they perform administrative functions, and any other natural or legal person who has gained the right to exercise public administration functions by a law, legal act or any other form provided for by the existing legislation"*

This Article is analogous with Article 3, which provides a detailed description of what public administration bodies include: "In the meaning of this Code, public administration bodies are*:*

a) central power bodies performing administrative functions;

b) every body of public entities, to the extent they exercise administrative functions;

c) the bodies of local power exercising administrative functions;

d) the bodies of Armed Forces, and any other structure, whose employees enjoy the status of the military man, as long as they perform administrative functions."

Thus, the new CAP has widened the concept of public body, and unlike the body of the public administration, it includes any natural or legal person, which, by law or any other legal act, performs functions of the public administration, such as a private educational institution established by law, which performs functions of public character. Therefore, public bodies will mean public administration bodies and any natural or legal person, which, by law, legal act, or any other form provided by the existing legislation, has been granted the right to exercise functions of the public administration.

In case two bodies of the public administration have incurred the damage, each of them is liable for the whole damage to the injured party. According to Article 14 of law no. 8510/1999 these bodies have solidary responsibility to the creditor and then the body which totally indemnifies the damage is entitled to make a claim against the other body to request the amount of compensation of the damage incurred by this body too [9] Nevertheless, this should be distinguished from bodies which exercise activities delegated by another body, and during this period they incur damage to the parties or third parties. According to Article 16 of law no. 8510/1999, the responsibility is borne by the delegating body, which has the original power [9, art. 16] The meaning of delegation is the same, both in the CAP of 1999 [9, art. 27–34] and the New CAP [9, art. 28,29], with the implication of the transfer of powers of a public administrationbody which is or is not subordinate to it. In this case, there is delegation of only the powers awarded by a law or act to the public administrationbody for delegation to another body. The delegation should be made publicly available for the citizens.

Cases of exception, resulting in invalidity of delegation, are stipulated:

- when delegation is prohibited by law or their legal acts.
- when collegial bodies delegate their competences to the chairperson of the body.
- When the sub-delegated body sub-delegates the competence to another body.

In case a body acts in contravention of these prohibitive cases or incurs damage to a third party, the damage is still indemnified by the delegating authority, but it is entitled to request the relevant compensation by a restitution suit. The restitution suit is set forth in Article 15 of law no. 8510/1999: *"In cases when the state administration body incurs damage due to an unlawful act or action of another body, the first*

body can request indemnification from the second body, unless provided otherwise by the law."

We can state that the members of the executive power, as long as they exercise the duty of Member of Parliament, or in fulfilling this duty, are not responsible for the opinions and vote cast which result in civil damage to third parties. If it is an element of a criminal offence or defamation, the member of the Council of Ministers is prone to responsibility. In general, the members of the Council of Ministers who enjoy the status of the MP are the ministers and the Prime Minister, whereas the vice ministers are more exposed to civil, political and criminal responsibility incurred from their actions or failure to act. The members of the Council of Ministers, in their administrative and executive-ordering activity, are liable under the relevant laws for any action, failure to act or administrative act carried out by them, resulting in damaging the rights of third parties, whether they are lawful or unlawful [10]. The two main laws of this responsibility are the ones cited above, but this does not mean that every law that regulates a particular field does not provide for the extra-contractual responsibility of its body in relation to third parties, such as the law regulating the activities of National Registration Center, State Police, etc.

2. Employees of the public administration bodies

Employees in public bodies, and the bodies themselves, under the New Code of Administrative Procedures, are liable to the parties when causing them damage. Civil servants are the natural persons employed at the bodies of public administration who directly implement the policies, executive-ordering duties of the body, administrative duties, etc., and other duties specified in the organic law and other laws the body is subject to, employment contract terms, etc. [10, art. 3 §b.] The concept of the civil servant can also be found by the term employee [11], state employee or simply employee [12, art. 14], as foreseen in the Code of Administrative Procedures of 1999.

I believe that the concept of the civil servant develops in analogy with the broadening of the meaning of the concept of public administration bodies in public bodies, including subjects whose profession and activity is regulated by the law of the New Code of Administrative Procedures and their services have an impact on the life of the public, general interests, etc.

The concept of the civil servant and his rights are specified in Article 107 of the Constitution: *"1. Public employees apply the law and are at the service of the people. 2. Employees in the public administration are selected by competition, except when the law provides otherwise. 3. Guarantees of tenure and legal treatment of public employees are regulated by law."*

Under the provisions of the New CAP, the responsibility between the bodies and civil servant seems to be solidarity [12, art. 39 § 1, 41§ 2, 67, 68.] in terms of the damage incurred to the parties, whether it is an administrative procedure or not, but although the civil servant is liable, the injured party files the suit against the body responsible for the unlawful consequence. Nevertheless, it should not be interpreted in this way. The responsibility of the public body or the public administration body to the employee, its civil servant, can involve guilt or innocence, otherwise known as strict.

In the interpretation of the administrative concept of this responsibility, the employer has been considered liable for the employee when the latter has incurred damage to third parties due to poor qualifications, lack of supervision of the employee by the employer, etc. In all these cases, the employer is liable for the lack of qualification of the employee, lack of control, etc. However, there is responsibility without guilt of the employer over the employee when he has acted wrongly or in open violation of the duty he has been assigned by law, contract, etc. Article 4 of law 8510/1999 provides that*:"omissis … 2. Employees of state administration bodies are exclusively liable for the damage incurred to private natural or legal persons, when there is evidence of wrongful conduct. 3. In cases set forth in paragraph 2 of this Article, the hiring state body, upon indemnification of the injured party, is entitled to request from the guilty employee the refund of the compensation he has paid".*

We can state that in both cases, whether guilty or not guilty (but for the employee's fault), the body is liable to third parties for his employees and acts as the only sued party against the suing injured party. The same provision is set forth by the Civil Code in specifying the relationship of delictual liability (extra-contractual) between the employer and the employee [13, art. 626].

The difference lies at the moment when the public body is entitled to file the suit of regress (restitution) [13, art. 618] and request from the employee the compensation given to the injured party. This happens only when the hiring public body is liable without guilt and it is proved that the employee has acted in violation of the duty requirements, wrongful conduct, commission of criminal offense, etc. In such a case, after a second adjudication, the employer, the public body, is relieved of the liability to the injured party and the employee (now defendant) is personally liable for his actions.

We highlight that the relationship injured party, employee and employer is not a solidary obligatory relationship, that is to say, the injured plaintiff is not entitled to choose which of them to sue because he will receive indemnification from each of them and then the solidary debtor will request the paid damages from the other debtor. The solidary obligation derives from the will of the parties or by means of a law. Since delicts derive only from the law, the solidary obligatory relationship between the creditor (herein meaning suing injured party) and the debtor (damaging employer or employee when acting wrongly) should be expressly specified in the law [13, art. 627]. Solidarity obligation occurs when the creditor, or each of the creditors, are entitled to request the execution of the same obligation, in total or in part, from the debtors as a whole and from each other individually [13, art. 424].

As a result, the whole adjudication would first focus on inquiring whether the sued party, the public administration body, has incurred the damage with or without guilt, although it will be nevertheless liable to the injured party for the damage incurred [13, art. 423]. Subsequently, the administrative body enjoys the right to file a suit for restitution against the employee when the court decides that damage was incurred due to the personal fault of the civil servant. Law no. 8510/1999 expressly provides for this kind of relationship by stating that the hiring state body, upon indemnifying the injured party, enjoys the right to request from the guilty employee, the restitution of the compensation it has paid [14].

Direct suits of the injured party against the employee are doomed to fail because, considering the relationship between the adjudicating parties, the relationship will be unknown before because the injured person, the citizen, the administrative process party, etc. has/hasn't entered a relationship with the public administration body, not the sued person as an individual. The sued person has thus acted as a representative, an employee of the public body, and this relationship is necessarily, clarified when the administrative body is a sued party. The latter, as a legal person, holds responsibility for the actions of its employees and specifies when the employee has acted within the duty requirements, beyond them or in wrongful conduct.

I think that suits against both the administrative body and the employee would encumber the process and would not avoid the restitution suit because in a civil process the obligation relationships between them, including compensation, could not regulate it in the middle of a first civil process. Therefore, in such cases, the court or the plaintiff had better call the employee in the capacity of the third party, in pursuance of Articles 193, 192 of the Code of Civil Procedure.

3. Direct injured persons

If we refer to the concept of civil liability of state bodies in the Constitution, everyone, i. e. every person, is entitled to request compensation or rehabilitation. This includes natural and legal persons, Albanian or foreign citizens, as well as persons of no citizenship. This is in line with Article 1 of law no. 8510/1999: "*State administration bodies are liable to extra-contractual property or non-property damage incurred to natural, legal, private, domestic or foreign persons.*" According to § 2 of this Article, this kind of responsibility is also regulated by the provisions of the Civil Code of the Republic of Albania, with Article 608 regulating the extra-contractual damage, every person is considered an injured person [15].

If we refer to the laws made after the Constitution of 1998 which relate to this Constitutional right, namely the CAP (1999) and the Law, two concepts refer to an injured party: private persons and concerned party. Article 14 of CAP provides that public administration bodies are liable for the damage incurred to private persons. At first sight, it seems like the responsibility of the institutions focuses only on this category, i. e. as persons who are parties to the administrative process, who, randomly, indirectly or

tangentially have been harmed by the direct or indirect consequences of the administrative act, administrative actions or failures to act.

In order to understand the goal of the legislator, we need to identify the context it has used this notion in other provisions of CAP. It is also observed in such Articles as: the principle of defending the public interest, the legal and constitutional rights of private persons [16]; the principle of equality and proportionality specifies that in relation to private persons, the public administration is led by the principle of equality [16, art. 11]; the principle of cooperation of the administration with private persons [16, art. 12]; the principle of taking decisions concerning cases of direct relation to private persons [16, art. 13]; the principle of efficiency and de-bureaucratization which provides that the public administration and the decision-taking process should be structured in such a way that they provide private persons the greatest possible access to the decision-taking process [16, art. 15]; the principle of internal and judicial control, aimed at defending the constitutional and legal rights of private persons, etc. [16, art. 16] The term private person is also mentioned in a number of subsequent provisions of CAP, including every person who enters into a relationship with the public administration as a concerned party in the administrative prosecution, can join later or establishes a relationship with the body after the completion of the administrative prosecution because he has suffered consequences in terms of his constitutional or legal interests.

This notion should not be confused with that of the concerned party included in the fourth part "Concerned parties in the administrative procedure" [16, art. 18], which speaks about a legal person, association, organization that initiate, whether by themselves or not, an administrative process and participate as a person whose interests are affected by the decisions taken during the administrative procedure. They enjoy the right to initiate an administrative procedure and participate in it. [17] Meanwhile, a private person is entitled to act under Article 14 of CAP after an administrative process, a previous administrative action or failure to act, and as a result of this, he initiates an administrative or judicial "annex" process for compensation or rehabilitation from the unfair actions previously conducted by the administration.

This difference was intended by the legislator in the provisions about the administrative suit [18] with the concerned party being entitled to file a suit against an administrative act or against the refusal to issue an administrative act, and it is entitled to address the court only after the administrative recourse has been carried out [19]. The concerned person also enjoys the right to be notified during the examination of the suit, etc. [20] Thus, a concerned party means a person who has initiated an administrative procedure for which he is entitled to follow all instances of administrative recourse, if provided for by the relevant law, and he can then address the court.

As far as private persons are concerned, at the beginning of the section on administrative suits we find the general principle in Article 135, which recognizes all private persons the right to terminate or modify the effects of an administrative act [21].

In the New CAP there is uniformity of the persons before the public body by generally considering them parties [22]. A number of Articles consider them parties to the process, [23, art. 36] some as concerned parties [23, art. 135–146], involved parties, parties in procedure [23, art. 137], and in other cases as third parties [23, art. 145]. It should be noted that there is initial confusion about Article 15 on the principle of responsibility of public bodies because it creates the impression that it recognizes this right only to parties in the administrative process, but, just like the previous logic in the CAP of 1999, this right is recognized to any other person who may be harmed by this procedure despite the fact that he has not been a party concerned. This is clearly explained in Article 3 point 7, which defines the party not only as every natural or legal person that has a right or direct legitimate interest in an administrative procedure, but also a party that does not have a right or direct legitimate interest in an administrative procedure, but its rights or legitimate interests may be harmed by the outcome of the procedure. Article 3 point 8 specifies that a person includes every natural or legal person and any entity of the law.

4. Indirectly injured persons

The concept of an indirectly injured person was first introduced by Article 13 of Law no. 8510/1999.

This new concept, unknown before in the civil law, along with the concept of non-property injury set forth by Article 12, thus recognizing health injury, moral injury, etc., openly challenged the narrow provisions of the Civil Code on the responsibility for extra-contractual injury.

According to this law, indirectly injured persons from actions or failures to act by state administration bodies include:

- The person to whom the injured person was required to provide services at his home or work but they were not provided because the direct injured person has died, his corporal or health (wounded) state has been violated, and in the case of unfair deprivation of freedom;
- The person who is legally obliged to pay the burial expenses to the injured person whose death has been caused, e. g. to the parent for the minor child under 18 or unmarried, where customary death services are usually carried out at their parents' house when they are alive, or at the brother's, when they have died. In case he is married, the ceremony is usually carried out at the joint building of the wife. In the case of an elderly person, at the house of the child with whom the deceased has recently lived, etc.
- The person who was entitled to food supply by the injured person after a court decision or the person who has remained without food supply or economic support provided by the dead injured person.
- The person who is conceived but not born at the time of death of the dead injured person is granted the right to food supply.

However, the amount of compensation awarded to these injured persons will be in proportion with the guilt of the main injured person in creating the consequence [23, art. 135].

In case the state administration bodies are exempt from the liability for the damage caused to the main injured person (not for non-operation of technical tools), if the damage could not have been avoided even by a proper normal attention, they also are not liable for the direct injured party.

Third injured persons have now been better defined by the Unifying Decision of United Colleges of the Supreme Court no. 12, dated 14 September 2007, and pursuant to Articles 608, 625, 643/a onwards of the Civil Code, the United Colleges of the Supreme Court have provided the following unification: *"Every entity whose rights and personal and property legitimate interests have been violated by the unlawful fact, enjoys the subjective right and active, legitimacy to request (ius proprius) indemnification for the property and non-property injury whether he is or is not passive entity of the fact. In principle, this active legitimacy is not conditioned by enjoyment of the quality of heir to an injured person but only by the quality of the plaintiff as a person injured by the unlawful fact."*

The United Colleges of the Supreme Court have further interpreted that except for the most serious case, death of the injured party, injury is presumed to parents, brothers, sisters, spouse, grandparents, and other cohabitants. Even in the case of health injury, it is presumed that such injury is not incurred only to the injured person but injury of health and other forms [24] is incurred to related third parties such as spouse, children, parents, cohabitant, etc., thus not limiting the circle of persons to the circle of legal heirs.

This decision also specifies that family members are entitled to request compensation to enjoy the right to be sheltered and supplied with food by a relative, including cases when the victim (deceased directly injured person) is an adult or juvenile, was member of the "family" and "lived" with the survivors.

In conclusion, concerning the damage caused by public administration bodies to the directly injured persons, they are entitled to request the same types of damages, or even further (the right to food supply etc.) relatives (not necessarily legal heirs), the right to burial expenses, etc.

Conclusion

In conclusion, we can state that in the Republic of Albania, in accordance with the recent changes of administrative law norms, public administration and other bodies bear extra-contractual responsibility for their actions, failures to act, or other acts. Despite this constitutional principle, at present, except for a law which specifically regulates the extra-contractual responsibility of the state administration, no law regulating extra-contractual responsibility of public administration bodies or public bodies has been made. This specific law in interpretation of the Constitution, the principles of the New Code of Administrative Procedures can also be applicable to the extra-contractual responsibility of public administration bodies or other public bodies.

Civil servants are known as the final responsible persons of the "chain of responsibility" concerning the damage incurred to third parties when the damage has been incurred by personal unlawful and wrongful-conduct. In addition, the administrative body is liable for the restitution of the compensation to the injured party and then request for the restitution of the compensation from his employee, civil servant.

References:

1. Thomai J., Samara M., Haxhillazi P., Shehu H., Th.FekaV. Memisha, A. Goga "Dictionary of Albanian Language", Albanian Academy of Sciences, Institute of Language and Literature, Tirana, 2006.
2. Article 23 and 44 of the Constitution refer to a state body, whereas Article 48, 147 to a public body.
3. Article 147§ 2 refers to a state body in real acts, Article 151 a body of the state administration, while it refers to public administration bodies in Articles 1, 2, 3, 6, 7, 9, 10, 13, 14, 21, 105; It is referred as public administration in Articles 5, 9, 10, 11, 14, 16, 17, 37, 132, 149.
4. The legislative technique and the aim of the legislator is more clearly expressed in this law, which constantly elaborates only on the obligations and responsibilities of state administration bodies; Article 1 to 4, 8, 9, 11, 13–20 speak about state administration bodies and Articles 6,7 speak about state administration.
5. The Constitution refers to the public administration in Articles: 60§ 1 "The ombudsman", Articles 63§ 3,107 (employees of the public administration). Article 69§ "e", 112 refers to senior officials of the state administration.
6. Assoc. Prof. Sadushi S., "Lectures General principles of public administration", "Luarasi" Non-public Higher Education Institution, Tirana, 2013.
7. Stavileci E. "Dictionary of administrative terms" Kosovo Arts and Sciences Academy, Prishtinë (2010).
8. Enters into a force one year after the publication in the Official Journal.Published in the Official Journal no 87, dated 28 May 2015. Its effects start on 29 May 2016.
9. Law no.8510/1999 "On extra-contractual liability of public administrative bodies"Article 14.
10. Despite the fact that Article 44 of the Constitution specifies that they are held responsible for actions, failure to act or unlawful acts, CAP and law no. 8510/1999 stipulates that they are held responsible even when these bodies have acted in compliance with the law but there have been consequences for the interests and rights of the persons aimed at.
11. Law no. 152/2013"On civil servants" as amended, and law no. 9131 dated 08 September 2003 "On rules of ethics in the public administration".
12. Code of Administrative Procedure, Article 14.
13. Civil Code.
14. Except for the case of damage due to force majeure, necessary defense, etc.
15. Law no. 85199/1999 See Article 4§ 3.
16. Civil Code, Article 608§ 1 "The person who illegally and for his fault, causes damage to another person or to his property, is obliged to indemnify the damage caused."
17. Law no.8519/1999, Article 11.
18. Constitution Article 44.
19. CPA Article 45§ 2.
20. Judgement no.12 dated 14 September 2007, Unit Sessions, High Court of Republic of Albania.
21. Persons living inside or near a public property, which can be harmed by the administrative procedure;
22. Ombudsman.
23. CPA.
24. Judgement no.12 dated 14 September 2007, Unit Sessions, High Court of Republic of Albania. On Existential, moral, biological, material.

Section 4. Civil procedure

Tkachuk Oleh S.,
Candidate of Legal Sciences, Docent,
Judge of the High Specialized Court of Ukraine
for Civil and Criminal Cases, Scientific Secretary
of the Scientific and Consultative Board
E-mail: Ostkachyk1@gmail.com

Urgent tasks for judicial power in civil judicial proceedings of Ukraine

Abstract: The article deals with the analysis of contemporary issues of the judicial power of Ukraine while justice administering in civil cases. The author touches upon issues as for securing citizens' right to fair and unbiased judicial consideration basing on the principle of the rule of law. The author tried to find solution of complicated procedural contradictions of legislation and formed on this basis the determination of tasks of civil judicial proceedings.

Keywords: judicial power, justice, civil judicial proceedings, fundamental human rights.

According to the Constitution of Ukraine, the judicial power performs leading role, namely it realizes the function of justice. However, under contemporary conditions of internal and external policies, the very existence of the judicial power does not tell about its existence as a separate, self-sufficient and effective power, which is consistent with the requirements of society. Only if a country citizens are convinced of the reliability of judicial protection, and verdicts of the judicial power are inviolable and perceived as fair and unavoidable duty or punishment, due to the presence of actual instrument of protection of citizen's rights and freedoms in society, including from legal tyranny and nihilism of the legislative or executive power, it is possible to talk about real but not declaratively proclaimed judicial power.

In our article we will touch upon issues of civil process, as a form of justice realization, which provides the guarantees of justice administering, as well as guarantees of citizens' right to judicial protection. This is connected with the fact that beyond civil judicial proceedings, which secure the guarantees of its administering, justice is impossible.

The objectives of civil justice are fair, impartial and well-timed consideration and resolution of civil cases to protect affected, unacknowledged or disputed rights, freedoms and interests of physical persons, the rights and interests of legal persons, state interests (article 1 of the Civil Procedure Code of Ukraine) [1]. The noted objectives are undefeasible. However, on the background of perfect juridical formulation, as it always happens on practice, there are urgent and, at the same time, very critical issues.

The first one of them is represented by the issue of removing controversies between Constitutional and procedural legislation concerning the existence of two cassation instances in fact in Ukraine.

On one hand, in Ukraine there are high specialized courts in civil, criminal, commercial, and administrative judicial proceedings. Particularly, the article 31 of the Law of Ukraine "On the Judiciary and the Status of Judges" foresees that in the system of courts of general jurisdiction, there shall be high specialized courts operating as courts of cassation instance for civil and criminal, commercial, and administrative cases [2]. On the other hand, according to article 1 of the Law of Ukraine "On ensuring the right to a fair trial" of 12 February 2015, the Supreme Court of Ukraine shall have the right to reverse the court decision (s) in whole or in part and refer the case for a new trial to the court of first, appellate or cassation instance; reverse the court decisions and termi-

nate the proceedings on the case; reverse the court decision (s) in whole or in part and refer the case for a new trial to the court which adopted the impugned court decision [3].

In our opinion, in such authority of the Supreme Court of Ukraine, features of cassation court are seen clearly. This court applies it completely, despite the fact that procedural authority of the Supreme Court of Ukraine, according to article 360–3 of the Civil Procedure Code of Ukraine is clearly determined and there are no functions of cassation review of judgements there.

Herewith, the Constitutional Court of Ukraine in its decision No. 8-рп/2010 of 11 March 2010 concerning the official interpretation of terms "the highest judicial body", "high judicial body", "cassation appeal", which are mentioned in articles 125, 129 of the Constitution of Ukraine, indicated that cassation instance realizes its procedural rights within cassation proceedings only to examine the correctness of juridical estimation of a case circumstances in judgements of the first instance courts and appeal courts. The fact that the Supreme Court of Ukraine examines judgements of courts as a cassation instance after high courts cannot be justified from the viewpoint of securing the right to fair consideration of case within reasonable term. Besides, the presence of two cassation instances for the examination of judgements does not correspond to the principle of legal certainty.

Taking into account the abovementioned, the Constitutional Court of Ukraine concluded that only single cassation appeal and judgements review can be lawful. The Constitutional status of the Supreme Court of Ukraine as the highest judicial body in the system of general jurisdiction courts does not foresee its legislative authorization as a cassation instance as for judgements of high specialized courts, which perform the authority of cassation instance [4].

It would seem that everything is clear and understandable. Dual appeal must not be. By in its resolution No. 6–61 цс 15 of 27 May 2015 the Supreme Court of Ukraine cancelled resolution of cassation instance court and directed the case to new consideration to this court only on the basis of the fact that in the case on loan debt for about 16 million UAH, in the resolution part of the judgement of appeal court, which was supported by the High Specialized Court of Ukraine for Civil and Criminal Cases, not all components of the debt volume and the primary price of the mortgage subject in monetary terms were noted, though they were noted completely in the motivating part of the judgement [5].

Anyway, it is incorrect to cancel a judgement on the abovementioned formal basis. It violates reasonable terms of judicial consideration, terms for the protection of the violated right of creditor and, in our opinion, does not correspond to role, assignment and procedural authority of the Supreme Court of Ukraine, since judgements can be cancelled, if committed violations influenced on incorrect solution of dispute but not only on formal basis for review of considered case ignoring the principle of finality and obligatoriness of judgement, the principle of legal certainty guaranteed by the Constitution of Ukraine and proclaimed in the article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms [6, c. 99–107].

There are a lot of such judgements of the Supreme Court of Ukraine. In our opinion, such practice obviously contradicts to the Constitution of the state. Moreover, formally it **corresponds** to the Law and, **at the same time contradicts** to citizens' fundamental right to fair consideration of a case within reasonable term. The most important task for the judicial power here is the remedy of this default. It is not so easy to perform it, if we demonstrate that the principle of the rule of law is not an empty declaration, but a way to the construction of a legal state oriented at general human values. In this case on the scales of justice on one hand there is a wish "to correct" the solution of a civil case by means of additional, repeated investigation of evidences, on the other hand there is the parties' right to get final decision as for the case and the confirmation of legal rightness of the accomplished fact or inconsistency of arguments submitted to the court. Anyway, parties resort to court to get the settlement of conflict but not an endless and repetitive process.

In its opinion No. 401/2006 from 12 March 2007 the European Commission for Democracy through Law (Venice Commission) made remarks concerning the four-level judicial system. The experts pointed that the more complicated the system

of judiciary, the higher potential for procedural obstacles in cases consideration [7].

The second urgent task for Ukrainian justice is connected with the fist one, as well as with the Supreme Court of Ukraine. According to article 360–1 of the Civil Procedure Code of Ukraine, judge of the Supreme Court of Ukraine after opening proceedings as for a case shall resort to corresponding specialists of the Scientific and Consultative Board of the Supreme Court of Ukraine for the preparation of scientific opinion as for a norm of law, which was unequally applied by a court (courts) of cassation instance, except for cases, when the decision on application of this legal norm in similar legal relations was received before by the Supreme Court of Ukraine [1]. And only after receiving such opinion it has right to appoint the case to be heard. Moreover, according to practice, such decisions of scholars became a component of motivating part of judgements of the Supreme Court of Ukraine.

For example, while consideration of the case under the suit of the Astra Close Joint-Stock Company to the State Export-Import Bank of Ukraine on the recognition of executive inscription of a notary officer as inexecutable one (case No. 3–111 rc 11 from 17 October 2011), or while consideration of the case under the suit of an individual to Kirovohrad city master, communal maintenance company No. 3, Kirovohrad city council on reemployment and paying wages (case No. 6–156 цс 12 from 26 December 2012), the Supreme Court of Ukraine in its resolutions pointed that this court requested scientific opinions as for application of corresponding legislation. The judgement is based on these scientific opinions [8].

Therefore, in our opinion, now there is a situation, which is unacceptable in principle. The court is guided and bases its decision even with non-expert opinion, which does not foresee the analysis and investigation of material, which are obvious for a judge and each participant of the process, discussion, but with the opinion of a scholar-lawyer. What is this conclusion — the queen of evidence? Expertise for the solution of legal issues? No. Is it an indisputable judgement? No. It is known, where there are two lawyers, there are three opinions. But here there is one lawyer.

And again, this is a prescription of Law, procedural regulations. And again there is a question, is the Law higher than right to fair and public consideration of a case within reasonable term by an independent and unbiased court. The judicial power and the Supreme Court of Ukraine as its highest representative shall solve this task, since legislator, which to some extent flirt with part of society, cannot deal with such objective.

The Civil Procedure Code of Ukraine determines tasks of civil judicial proceedings in scientific communities in different ways.

Taking into account the abovementioned problems, we suggest to upgrade corresponding legal norm by pointing out that the tasks of civil judicial proceedings are represented by justice administering on the basis of fairness, legal certainty, the rule of law and priority ranking of fundamental human rights, as well as protection of violated, non-recognized or disputed rights, freedoms and interests of individuals, rights and interests of legal entities, state by means of solving individual disputes, which are impossible or cannot be solved in extra-judicial order according to Ukrainian legislation.

References:

1. Civil Procedure Code of Ukraine of 18.03.2004 № 1618 [E-resource]. – Access mode: http://zakon0.rada.gov.ua/laws/show/1618–15.
2. Law of Ukraine "On the Judiciary and the Status of Judges" of 07 July 2010. [E-resource]. – Access mode: http://zakon5.rada.gov.ua/laws/show/2453–17
3. Law of Ukraine «On ensuring the right to a fair trial» of 12 February 2015. [E-resource]. – Access mode: http://zakon5.rada.gov.ua/laws/show/192–19
4. Constitutional Court of Ukraine. Judgement of 11 March 2010 № 8-рп/2010. [E-resource]. – Access mode: http://zakon5.rada.gov.ua/laws/show/v008p710–10.
5. Resolution of the Supreme Court of Ukraine of 27 May 2015 № 6–61 цс 15//Official web-site of the Supreme Court of Ukraine. [E-resource]. – Access mode: http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(documents)/B3BAA698A76892E0C2257B7B004B2029

6. Luspeny D., Sakara N. Ukrainian Model of Cassation Appeal of Judgements on Civil Cases: Problems and Perspectives of Upgrading (Simplification)//Law of Ukraine – 2008. – № CDL-AD (2010)026-e Joint opinion on the law on the judicial system and the status of judges of Ukraine by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15–16 October 2010). http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282010%29026-e.
7. Resolution of the Supreme Court of Ukraine of 17 October 2011 № 3–111 rc 11; of 26 December 2012 № 6–156 цс 12//Official web-site of the Supreme Court of Ukraine. [E-resource]. – Access mode: http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(documents)/B3BAA698A76892E0C2257B7B004B2029.

Section 5. Civil law

Kurbanova Khursheda Khayrullaevna,
senior teacher of the department of civil,
enterprising and international
law of the Law faculty of Tajik State University of Law,
Business and Politics, Khujand
E-mail: kurbanova_1502@mail.ru

Civil liability of the auditor for poor quality provision of audit services

Abstract: Presented scientific article on the theme "Civil liability of the auditor for poor quality provision of audit services" addresses the issue of liability, in the case of poor quality audits. The author, analyzing the existing legislation, domestic and foreign doctrine indicates that unqualified audit is the action (inaction) of the auditor having a guilty nature, in the form of intentional or reckless harm to check the audited entity, and the innocent act of an auditor, caused the damage to the inspected subject as a result of low qualification. However, analyzing the legal literature, the author focuses on the question that the legislator has given proper attention to the given terminology, as they are commonly known.

Key words: low-quality audit, unqualified audit, auditor, audited entity, the non-detection error.

Курбанова Хуршеда Хайруллаевна
ст. преподаватель кафедры гражданского, предпринимательского
и международного права юридического факультета
Таджикского государственного университета права,
бизнеса и политики г. Худжанд
E-mail: kurbanova_1502@mail.ru

Гражданско-правовая ответственность аудитора за некачественное оказание аудиторских услуг

Аннотация: Представленная научная статья, посвященная теме « Гражданско-правовая ответственность аудитора за некачественное оказание аудиторских услуг» рассматривается вопрос о возникновения ответственности, в случае некачественно проведенного аудита. Автор, анализируя действующее законодательство, отечественную и зарубежную доктрину указывает, что неквалифицированное проведение аудита — действие (бездействие) аудитора, имеющий виновный характер, в форме умышленного или неосторожного причинения вреда проверяемому аудируемому субъекту, так и невиновное деяние аудитора, причинившее вред проверяемому субъекту в результате низкой квалификации. Однако анализируя юридическую литературу, автор акцентирует внимание на тот вопрос, что законодатель не уделил должного внимания данной терминологии, так как они общеизвестны.

Ключевые слова: некачественный аудит, неквалифицированное проведение аудита, аудитор, аудируемый субъект, необнаружение ошибки.

Осуществляя предпринимательскую деятельность, хозяйствующие субъекты сталкиваются с проведением аудиторской проверки. Цель проведения аудиторской проверки заключается в выражении мнения о достоверности финансово-бухгалтерской отчетности хозяйствующих субъектов. Однако в ходе деятельности аудитора может возникнуть резонный вопрос. Проведена ли аудиторская проверка качественно и какая же мера ответственности возникает при проведении аудита ненадлежащим образом?

В начале рассмотрения поставленных вопросов, следует обратить внимание дефиниции «некачественный аудит».

По данному вопросу весьма интересна мнение В. Гущина. Цитируемый ученый по поводу некачественного аудита отметил следующее: «Некачественным проведением аудиторской проверки признавались следующие действия:

при проведении проверки аудитором не были выявлены ошибки в ведении бухгалтерского и налогового учета, которые впоследствии обнаружены налоговым органом, и на предприятие наложены финансовые санкции;

аудитором указано о внесении изменений в бухгалтерскую отчетность, которые не соответствуют требованиям действующего законодательства, и т. п.» [3; 5, 111].

Следует отметить, что в действующем законодательстве Республики Таджикистан ни понятие «неквалифицированное проведение поверки», ни «некачественный аудит», не раскрыто. На наш взгляд, законодатель не уделил этим терминам должного внимания в связи с тем, что они общеизвестны. К проблеме раскрытия рассматриваемых понятий обратили внимание ряд ученых. В частности И. В. Тордия для раскрытия приведенных понятий обратилась к классификации. Например, следует различить квалификацию «работы» исходя из характеристики в зависимости по степени сложности и ответственности, а также квалификацию «работника» как степени его профессиональной подготовленности. Исходя из этого, в качестве неквалифицированного аудита следует, понять проверку проведенного лицом, не имеющим соответствующей квалификации. И. В. Тордия, рассматривая данный вопрос, особо акцентирует внимание на то, что не квалифицированность проведенной проверки следует считать проверку, оказанную некачественно по причине недостаточной квалификации аудиторов или по причине ошибки, также небрежности со стороны аудиторов, обладающих необходимой квалификацией для проведения данного действия [4, 147].

Суммируя сказанное, следует отметить, что не термин «неквалифицированное проведение проверки» имеет менее емкое содержание, нежели термин «оказанию аудиторских услуг ненадлежащего качества». Такая постановка вопроса на наш взгляд связана с тем, что приведенная вторая формулировка является более корректной с точки зрения гражданского законодательства. Она имеет более емкое содержание и включает в себя также частные случаи неквалифицированного проведения проверки. Соответственно, под неквалифицированным проведением аудита следует понять действие (бездействие) аудитора, имеющий виновный характер, в форме умышленного или неосторожного причинения вреда проверяемому аудируемому субъекту, так и невиновное деяние аудитора, причинившее вред проверяемому субъекту в результате низкой квалификации.

Нам представляется, что умышленность действия аудитора проявляется в том, что аудитор осознавал неправомерность своих действий, предвидел и желал наступления неблагоприятных последствий для аудируемого субъекта. В свою очередь действия аудитора по неосторожности следует понимать в случае, когда аудитор предвидел наступление неблагоприятных экономических последствий, но не желал их наступления, хотя сознательно это допускал.

Нам представляется, что для предотвращения некоторых неблагоприятных ситуаций в случае осуществления договора оказания аудиторской услуги, следует включить в смысл понятия «Неквалифицированное проведение проверки» или «некачественный аудит» дополнения следующего содержания. Кроме прочего… в качестве некачественного аудита следует признать то, что в ходе проведения аудита не было информации направленного в адрес аудируемого субъекта, где говорилось бы, что выводы аудитора действитель-

ны в пределах, установленного аудиторским заключением, уровня существенности и в объеме тех выборочных материалов, которые были согласованы с заказчиком.

Немаловажным моментом является то, что в случаи проведения некачественного аудита, заказчик должен будет доказать факт понесенным им убытков в следствии удовлетворение претензий налогового органа.

Исходя из того, что Закон Республики Таджикистан «Об аудиторской деятельности» не содержит положения касающегося ответственности аудитора за некачественное оказание аудиторских услуг, то в подобном случае в соответствии со ст. 735 ГК Республики Таджикистан заказчик аудиторских услуг вправе по собственному выбору сделать следующее:

— потребовать от аудитора срочного, безвозмездного устранения недостатков; в свою очередь аудитор будет обязан по собственному усмотрению безвозмездно оказать аудиторские услуги заново с возмещением заказчику причиненных просрочкой исполнения убытков;

— потребовать соразмерного уменьшения цены оказываемой услуги от аудитора;

— если в иное не предусмотрено в договоре, потребовать от аудитора возмещения причиненных расходов на устранение недостатков;

— в случае неисполнения положений договора или не устранения недостатков, отказаться от исполнения договора и потребовать возмещения причиненных убытков.

А. А. Чирков с целью предупреждения оказания некачественного предлагает установить критерии определения качества аудиторских услуг или определить качественные характеристики оказываемых аудитором услуг [5, 112].

По нашему мнению данное положение связано с таким вопросом как качество оказываемых услуг. Действительно, качество оказываемых услуг должны соответствовать тем требованиям, которые приведены в договоре. Данное утверждение закреплено в ст. 732 ГК Республики Таджикистан. Следует указать, по смыслу данной статьи выполненная работа должна соответствовать закрепленной в договоре условиям, а если в договоре такой пункт не предусмотрен, то тем требованиям, которым предъявляются подобного рода работы или услуги.

Кроме того, статья 735 ГК Республики Таджикистан предусматривает положение, касающееся выполнения работы, ухудшающее условие договора. В подобном случае законодатель устанавливает право заказчика по своему выбору требовать у подрядчика выполнения следующих действий:

1) за свой счет устранить недостатки работы в разумные сроки;

2) уменьшение стоимости оказанной услуги (выполненной работы)

пропорционально отступлению от положений договора;

3) за свой счет устранение недостатков или его возмещение заказчику,

если в договоре предусматривалось право заказчика устранять недостатки.

На практике может возникнуть случаи, когда заказчик понес самостоятельно все расходы для устранения недостатков. Такое обстоятельство может возникнут тогда, когда необходимо предоставить аудиторское заключение партнёрам по бизнесу или инвесторам в строго оговоренный договорам срок. В подобном случае, следует предоставить заказчику возможность взыскать с аудитора понесенные им расходы на устранение недостатков вне зависимости от того, предусмотрено это в договоре на оказание аудиторских услуг или нет.

Как предлагает А. А. Чумаков «Качественным будет тот аудит, который проведен в соответствии с Законом об аудиторской деятельности и действующими правилами (стандартами) аудиторской деятельности, и по результату, которого аудитор передает заказчику составленное в соответствии с требованиями ФПСАД № 6 аудиторское заключение» [6, 129].

Подобной позиции придерживаются также и другие ученые. В частности А. В. Газарян отметил следующее:

«За неквалифицированное проведение проверки, приведшей к убыткам для государства или экономического субъекта, или при составлении заведомо ложного аудиторского заключения аудитор может быть привлечен к ответственности. Но если аудитор сможет доказать, что он тща-

тельно провел все необходимые для проверки процедуры и, следовательно, не мог действовать небрежно, ответственность за неверную информацию ляжет на руководство аудиторской организации» [2].

Интересное мнение выказали А. Д. Шеремет, В. П. Суйц. Указанные ученые отождествили качество предоставляемых услуг с их соответствием действующим и общепринятым стандартам. В случае с аудитом, аудитору необходимо доказать соответствия проведенного аудита с существующими в сфере аудиторских услуг стандартами. Однако, что примечательно, даже в подобном случае, при обнаружении недостатков или ошибок аудитор может не нести за это ответственности [7, 38]. Продолжая мысли цитируемых ученых, следует отметить, что ошибочное суждение аудитора обуславливается презумпцией небрежности в работе и ее аудитор должен будет опровергнуть. Однако, если аудит проведен в соответствии с общепринятыми аудиторскими стандартами, то часто такое положение дел выступает доказательством невиновности [7, 37].

Солидарную позицию с вышеприведенным мнением придерживаются также и Э. А. Аренс и Дж. К. Лоббек. Они отмечают, что если аудит проведен в рамках существующих стандартов, то аудитор не может нести ответственности. В ходе проведения аудиторской проверки аудитором не будут определены ошибки или недостатки в финансовой (бухгалтерской) отчетности, но с другой стороны, однако аудит был выполнен в соответствии с требованиями аудиторских стандартов, то даже в подобных случаях вероятность положительного исхода судебного решения о привлечении аудитора к ответственности невелика [1, 115].

В качестве ненадлежащей аудиторской проверки может выступать необнаружение аудитором, в ходе этой деятельности, существенного искажения в бухгалтерской отчетности клиента, и которое может привести к искажению показателей в бухгалтерском балансе по соответствующей строке. Примером тому выступает не выявления недостатков при исчислении налоговой базы по налогу на прибыль на сумму, превышающую уровень существенности.

При возникновении подобных случаев, аудируемый субъект имеет право потребовать с аудитора покрытия убытков, причиненные ему произведенной некачественной аудиторской проверкой [3].

Кроме прочего, не определение искажений в ходе исчисления налогов также может быть связано с содержанием предмета договора об оказании аудиторских услуг. Оно включает в себя подтверждение достоверности только бухгалтерской отчетности.

Однако, следует иметь в виду, что организации, которые планируют проведение аудиторской проверки должны иметь в виду то, что аудит — это деятельность, в первую очередь, направленное на оценку состояния бухгалтерского учета и отчетности на предприятии, а не состояния налоговой отчетности организации. Исходя из сказанного, следует вывод, что аудируемый субъект должен представлять объем представляемых ему услуг, а также имел возможность предъявить какие-либо претензии аудитору по поводу необнаружения аудитором ошибок в исчислении налогов. В этой связи необходимо в договоре закрепить положение о проведения аудита и относительно налоговой отчетность аудируемого субъекта.

Следовательно, заключая приведенное выше суждения, следует отметить, что критерием качественности аудиторской проверки признается выводы аудитора о достоверности финансовой (бухгалтерской) отчетности аудируемого субъекта. Если в завершении проведенной аудиторской проверки аудитором отмечено неверное суждение по поводу состояния финансовой (бухгалтерской) отчетности аудируемого субъекта, то в таком случае проведенную проверку следует признать как некачественную. В свою очередь, в подобных случаях, аудитор должен быть привлечен к гражданско-правовой ответственности за ненадлежащее исполнение своих обязательств.

Анализ юридической литературы и положения приведенное в них было установлено, что доказать причину некачественного аудита, а именно низкую квалификацию либо недобросовестность аудитора, достаточно сложно, следовательно, было установлено должны быть про-

ведены следующие мероприятия практического характера:

— для того, чтобы внедрить инструменты штрафных санкций должны быть созданы условия, приводящие к упрощению судебной процедуры;

— повышение в обществе значение судебных решений обязательности их выполнения;

— создание оптимальной методики, направленной для оценки нанесенного ущерба от проведенного некачественного аудита.

На наш взгляд было бы целесообразно в законодательном порядке закрепить положение, по которому объем выплачиваемых штрафных санкций заказчиком был больше от объема гонораров, полученных аудитором. Это способствовало бы дисциплинированности в отношениях между заказчиком и аудитором, повысило бы их взаимное обязательство, как по оказанию услуг, так и по осуществлению выплат по договору.

Список литературы:

1. Аренс Э. А., Лоббек Дж. К. Аудит/Пер. М. А. Терехова. – М.: Финансы и статистика. 2001, – 560 с.
2. Газарян А. В. Заявление об ответственности заказчика//Бухгалтерский учет. 2002. № 14. http://www.lawmix.ru/bux/130681 (Дата обращения 15.04. 2015 г.)
3. Гущин В. Ответственность сторон договора об оказании аудиторских услуг//Право и экономика. – 2004. – № 3. http://www.lawmix.ru/bux/112625 (Дата обращения 15.04. 2015 г.)
4. Тордия И. В. Правовое регулирование аудиторской деятельности Российской Федерации. Дисс…, канд. юрид. наук/И. В. Тордия. – Екатеринбург. 2003. – 184 с.
5. Чирков А. А. Гражданско правовое регулирование деятельности исполнителя (аудитора) по договору об оказании аудиторских услуг. Дисс… канд. юрид. наук/А. А. Чирков. – Белгород. 2006. – 159 с.
6. Чумаков А. А. Ответственность аудитора за некачественное проведение аудиторской проверки. Хозяйство и право. 2004. № 9 (1) С. 127–133.
7. Шеремет А. Д., Суйц В. П. Аудит: Учебное пособие. – М.: ИНФРА – М. 1995. – 240 с.

Section 6. Constitutional law

Ponomareva Iuliia Urevna,
Candidate of historical Sciences, docent
RANH and GS under the President of the RF,
faculty of Law, Orel, Russia
E-mail: ponomarevajulia799@mail.ru

Fomina Maria Gennadevna,
Candidate of politic Sciences, docent
RANH and GS under the President of the RF,
faculty of Law, Orel, Russia

Schegoleva Natalia Anatolievna,
Candidate of legal Sciences, docent
RANH and GS under the President of the RF,
faculty of Law, Orel, Russia

Problems of realization of passive electoral right at the stage of nomination and registration of candidates

Abstract: The article deals with the problems of realization of passive electoral right in the Russian Federation. The authors analyze the norms of the current electoral law and offer a solution to investigated problems.

Keywords: elections, electoral law, passive electoral right, equality.

Пономарева Юлия Юрьевна,
кандидат исторических наук, доцент
РАНХ и ГС при Президенте РФ,
юридический факультет, Орел, Россия
E-mail: ponomarevajulia799@mail.ru

Фомина Мария Геннадьевна,
кандидат политических наук, доцент
РАНХ и ГС при Президенте РФ,
юридический факультет, Орел, Россия

Щеголева Наталья Анатольевна,
кандидат юридических наук, доцент
РАНХ и ГС при Президенте РФ, юридический факультет, Орел, Россия

Проблемы реализации пассивного избирательного права на стадии выдвижения и регистрации кандидатов

Аннотация: Статья посвящена проблемам реализации пассивного избирательного права в Российской Федерации. Авторы анализируют нормы действующего избирательного законодательства и представляют решение исследуемых проблем.

Ключевые слова: выборы, избирательное законодательство, пассивное избирательное право, равенство.

Реализация гражданами своего пассивного избирательного права является важнейшим условием воплощения принципа народовластия. Однако нередко осуществление гражданами данного права проходит с существенными сложностями и проблемами.

Международные избирательные стандарты гарантируют равенство пассивного избирательного права путем предъявления равных требований по выдвижению и регистрации кандидатов. Пункт 6 статьи 9 Конвенции о стандартах демократических выборов, избирательных прав и свобод в государствах — участниках СНГ гласит: «Подлинные выборы предполагают равные и справедливые правовые условия для регистрации кандидатов, списков кандидатов и политических партий (коалиций). Регистрационные требования должны быть ясными и не содержать условий, способных стать политических партий и от ее региональных отделений, что противоречило бы самой идее структурирования политического пространства» [1].

Не смотря на то, что действующее на сегодняшний день российское избирательное законодательство более чем детально регламентирует процесс регистрации кандидатов, преждевременно утверждать, что на практике не возникает затруднений, как у представителей избирательных комиссий различных уровней, судов, правоохранительных органов, так и у самих граждан, желающих реализовать свое пассивное избирательное право.

Существенно на процедуру выдвижения и регистрации кандидатов, по нашему мнению, повлиял Федеральный закон от 2 мая 2012 года № 40-ФЗ «О внесении изменений в Федеральный закон «Об общих принципах организации законодательных (представительных) и исполнительных органов государственной власти субъектов Российской Федерации» и Федеральный закон «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации», закрепляющий прямые выборы высшего должностного лица субъекта Российской Федерации (руководителя высшего исполнительного органа государственной власти субъекта Российской Федерации). Данный закон расширяет круг субъектов, обладающих правом принимать участие в процедуре выдвижения и регистрации кандидатов, предусматривая, что этот процесс может осуществляться при участии Президента Российской Федерации. Согласно изменениям, внесённым в Федеральный закон от 6 октября 1999 года № 184-ФЗ «Об общих принципах организации законодательных (представительных) и исполнительных органов государственной власти субъектов Российской Федерации», Президент Российской Федерации по своей инициативе может проводить консультации с политическими партиями, выдвигающими кандидатов на должность руководителя высшего исполнительного органа государственной власти субъекта Российской Федерации, а также с кандидатами, выдвинутыми в порядке самовыдвижения [2]. За рамками закона остается проблема правового регулирования процедуры консультаций Президента Российской Федерации с политическими партиями и кандидатами, порядок проведения которых определяется главой государства. По нашему мнению, предусмотренное законодательством право Президента Российской Федерации проводить или не проводить консультации изначально закладывает возможности нарушения принципа равного избирательного права: в отношении одних избирательных объединений, кандидатов глава государства своим правом может воспользоваться, в отношении других — нет.

Федеральный закон от 2 мая 2012 года № 40-ФЗ «О внесении изменений в Федеральный закон … » расширил перечень оснований регистрации кандидатов. В соответствии с ним выдвижение кандидата на должность руководителя высшего исполнительного органа государственной власти субъекта Российской Федерации политической партией или в порядке самовыдвижения должно поддержать от 5 до 10% депутатов от представительных органов муниципальных образований и (или) избранных на муниципальных выборах глав муниципальных образований субъекта Российской Федерации

[3]. Закон Орловской области «О выборах Губернатора Орловской области» закрепляет основания для выдвижения и регистрации кандидата на должность Губернатора области. Так в статье 14 установлено, что «граждане Российской Федерации, обладающие пассивным избирательным правом, могут быть выдвинуты кандидатами на должность Губернатора Орловской области». В законе определено, что «выдвижение кандидата политической партией должны поддержать 8% депутатов представительных органов муниципальных образований и (или) избранных на муниципальных выборах глав муниципальных образований Орловской области. Число лиц, необходимое для поддержки выдвижения кандидата, определяется в процентном отношении от общего числа указанных депутатов, предусмотренного уставами этих муниципальных образований на день принятия решения о назначении выборов Губернатора Орловской области, и числа избранных на муниципальных выборах и действующих на день принятия указанного решения глав этих муниципальных образований» [4].

Подобные условия регистрации кандидатов, которые можно рассматривать как новеллу российского избирательного законодательства, являются чрезмерно завышенными. Весьма сложно законодателю субъекта Российской Федерации регламентировать порядок сбора подписей среди депутатов и глав муниципальных образований. Даная процедура существенно отличается от сбора подписей избирателей, закрепленного Федеральным законом от 12 июня 2002 года № 67-ФЗ «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации», предусмотренного для иных выборов. Сбор подписей в поддержку выдвижения является частью предвыборной агитации и предусматривает возможность личного контакта кандидата, его представителей и лиц, среди которых сбор подписей осуществляется. Если у кандидата, выдвинутого политической партией, будет возможность встречи с выборными лицами муниципальных образований, представляющими эту политическую партию, то у самовыдвиженцев её не будет. По нашему мнению, в законодательстве необходимо закрепить гарантии права кандидатов, их представителей на встречу с депутатами представительных органов муниципальных образований и избранными на муниципальных выборах главами муниципальных образований субъекта Российской Федерации.

Рассматриваемые условия регистрации носят в некоторой степени неопределённый характер. В ходе правоприменительной деятельности довольно сложно определить правильно общее количество подписей депутатов и глав муниципальных образований субъекта Российской Федерации, от которого отсчитывается 5–0%. За основу принимается общее число указанных депутатов, предусмотренное уставами этих муниципальных образований на день принятия решения о назначении выборов, и избранных на муниципальных выборах и действующих на день принятия указанного решения глав этих муниципальных образований. Но возможна ситуация, когда закрепленное в уставах количество депутатов будет отличаться от числа реально действующих. Причиной этого могут являться внесенные в устав муниципального образования изменения, касающиеся численности депутатов, которые будут применяться после завершения срока полномочий представительного органа действующего созыва.

Законодательством не регулируется порядок определения необходимого для регистрации количества подписей депутатов и глав муниципальных образований. В частности, закон не закрепляет субъект избирательного права, к обязанности которого относится определение общего числа депутатов, предусмотренного уставами муниципальных образований на день принятия решения о назначении выборов, и избранных на муниципальных выборах и действующих на день принятия указанного решения глав этих муниципальных образований. В настоящее время в полном объеме подобной информацией не обладает ни одни орган государственной власти. Можно предположить, что сведениями об общем количестве депутатов, закрепленными в уставах муниципальных образований, могут обладать органы Министерства юстиции России, к полномочиям которых относится регистрация уставов муниципальных образований.

В связи с тем, что на ближайших выборах кандидаты (списки кандидатов), выдвинутые поли-

тическими партиями, будут регистрироваться без представления подписей избирателей, неясной остается судьба такого института избирательного права, как сбор и представление подписей избирателей. Согласно действующему законодательству сбор и представление подписей избирателей сохраняется на федеральных выборах и на всех выборах, при регистрации кандидатов, выдвинутых в порядке самовыдвижения, и в случаях, предусмотренных законом, общественными объединениями, не являющимися политическими партиями. Рассматривая возможности дальнейшего развития этого института необходимо отметить, что на практике, вполне возможно, это основание регистрации будет использоваться достаточно редко. Дальнейшему развитию этого института как средства реализации пассивного избирательного права будет способствовать уточнение процесса проверки подписных листов, что позволит избежать двоякого толкования элементов их формы и содержания. Действующее избирательное законодательство позволяет варьировать процедуру проверки подписных листов от чрезмерно строгой до слишком либеральной. Подписные листы должны стать средством обеспечения реализации пассивного избирательного права российских граждан, отражающим доверие избирателей к кандидату. Если данный подход не будет реализован, институт сбора и представления подписей избирателей может со временем уйти в прошлое.

В итоге необходимо отметить, что порядок регистрации кандидатов (списков кандидатов), с одной стороны, должен быть направлен на предоставление гражданам возможности реализации своего пассивного избирательного права, с другой стороны — обеспечить возможность участия в выборах лишь тем кандидатам (избирательным объединениям), которых поддерживают избиратели. Законы, принятые в последнее время, не смогут в полной мере реализовать эти задачи. Условия регистрации кандидатов на должность руководителя высшего исполнительного органа государственной власти субъекта Российской Федерации можно рассматривать как чрезмерно завышенные и неопределённые [5, 117–118].

Одним из актуальнейших вопросов при обеспечении реализации гражданами пассивного избирательного права по-прежнему является отсутствие конкретных правовых механизмов компенсации нарушения пассивного избирательного права кандидата. Так, в Постановлении от 15 января 2002 года Конституционный Суд Российской Федерации констатировал, что «окружная избирательная комиссия и суды не обеспечили своевременную и эффективную защиту пассивного избирательного права заявителя, в результате чего он был неправомерно лишен возможности участвовать в выборах в качестве кандидата в депутаты» [6]. Поэтому Конституционный Суд Российской Федерации в указанном Постановлении высказался за компенсацию судом негативных последствий нарушения пассивного избирательного права кандидата, которому незаконно отказано в регистрации, но восстановить его пассивное избирательное право проведением повторных выборов невозможно. Сегодня российское законодательство и судебная практика, кроме отдельных случаев возмещения вреда незначительными денежными суммами, пока не знают конкретных мер и механизмов такой компенсации.

Проблемы с реализацией гражданами пассивного избирательного права во многом связаны с отсутствием единства судебной практики, нестабильностью избирательного законодательства, которое существенно меняется перед каждой новой избирательной кампанией, что не способствует выработке единой судебной практики. При этом, что избирательные споры по общественному резонансу и широкому кругу участников бывают весьма острыми, серьезно влияют на формирование отношения граждан не только к правосудию, но и к власти в целом, поэтому крайне важно единообразие судебной практики.

Согласно данным, представленным избирательными комиссиями субъектов Российской Федерации, в ходе подготовки и проведения выборов в единый день голосования 14 сентября 2014 года судами общей юрисдикции было рассмотрено 376 дел, из которых удовлетворено 93%, или 25% (в том числе удовлетворено 90 заявлений об обжаловании решений избирательных комиссий по вопросам выдвижения и регистрации кандидатов, списков кандидатов) [7]. Количество нарушений на стадии выдвижения и регистрации

кандидатов одно из самых высоких. В то же время, именно на этой стадии поступает значительное количество жалоб от граждан и избирательных объединений, которым было отказано в заверении списков или регистрации на предвзятость со стороны членов избирательных комиссий.

Таким образом, существующее избирательное законодательство содержит значительные правовые проблемы в реализации гражданами пассивного избирательного права и, следовательно, требует дальнейшего правового совершенствования.

Список литературы:

1. О стандартах демократических выборов, избирательных прав и свобод в государствах-участниках Содружества Независимых Государств: Конвенция государств-участников СНГ заключена в г. Кишиневе 07.10.2002//Бюллетень международных договоров. – 2006. – № 2.
2. Об общих принципах организации законодательных (представительных) и исполнительных органов государственной власти субъектов Российской Федерации: Федеральный закон от 06.10.1999 № 184-ФЗ (ред. от 03.11.2015)//СЗРФ. 1999. № 42. Ст. 5005.
3. О внесении изменений в Федеральный закон «Об общих принципах организации законодательных (представительных) и исполнительных органов государственной власти субъектов Российской Федерации» и Федеральный закон «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации»: Федеральный закон от 02 мая 2012 года № 40-ФЗ//СЗРФ. 2012. № 19. Ст. 2274.
4. Закон Орловской области от 04.06.2012 № 1364-ОЗ (ред. от 26.05.2014) «О выборах Губернатора Орловской области» (принят ООСНД 24.05.2012)//Орловская правда. № 80. 06.06.2012.
5. Макарцев А. А. Институт поддержки выдвижения кандидатов на должность высшего должностного лица субъекта Российской Федерации: практика реализации//Юридическая наука и образование в России и Азии. Методика преподавания права: материалы 1 Рос.-Азиат. правового конгр. – Барнаул: Си-пресс. – 2014. – С. 117–118.
6. По делу о проверке конституционности отдельных положений статьи 64 Федерального закона «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации» и статьи 92 Федерального закона «О выборах депутатов Государственной Думы Федерального Собрания Российской Федерации» в связи с жалобой гражданина А. М. Траспова: Постановление Конституционного Суда Российской Федерации от 15 января 2002 № 1-П//СЗРФ. 11.02.2002.№ 6.Ст. 626.
7. Информация, о поступивших в ЦИК России обращениях о заявленных нарушениях избирательного законодательства в ходе избирательных кампаний в субъектах Российской Федерации по выборам 14 сентября 2014 года. http://www.cikrf.ru/news/relevant/2014/12/17/01.html

Msc. Shala Mervete, Phd (c)
University European Tirana
E-mail: merveteshala@yahoo.com
Mr. sc. Xhavit Shala Phd (c)
University European Tirana
E-mail: xhavitshala@gmail.com

The Role of the Omdusmann of the Republic of Kosovo

Abstract: The rights and fundamental freedoms are guaranteed by the Constitution and international act. Article 21, paragraph one of the Constitution of Kosovo, states explicitly: "Rights and

fundamental freedoms are indivisible, inalienable indefeasible and are the basis of the legal order of the Republic, referring to the same article, paragraph two Republic of Kosovo protects and guarantees the rights and fundamental freedoms foreseeable by Constitution".

This article examines the role of the Ombudsman to determine the constitution and the law on Ombudsman as a legal mechanism for protection, supervision and promotion of fundamental rights and freedoms of natural and legal persons from illegal actions or failures to act and improper actions of public authorities, other bodies and organizations exercising public authorizations for their account, and his role in the restoration of the right of citizens. The purpose of this paper firstly: intends to determine the principles of a functioning public administration. is to see how much human rights and fundamental freedoms in Kosovo are respected, how is affecting the Ombudsman in the prevention of abuse of power of public administration, arbitrary decisions, which violate human rights and fundamental freedoms, the restoration of the right of citizens and the last the second goal is observance of fundamental human rights, restoring the right violated by state or public administration in Kosovo.The practical realization of the Ombudsman's recommendations from public administration makes administration more functional, responsive, professional, efficient, transparent and accountable in fulfilling its duties in service to the citizens of Kosovo.

The methodology of the paper is mixed.

Keywords: The Constitution, the Ombudsman, fundamental freedoms, human rights, democracy, rule of law.

Introduction

Article 7 of the Constitution of the Republic of Kosovo foresees the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.

Any person, group or organization can of exercise appeal, request or notification to the Ombudsperson if believes that his/her rights and freedoms are violated. The Ombudsperson and Constitutional Court are two Institutions has competence of examine with appeal of citizens for violation of human rights by Institutions central and local.

According to article 113 paragraph 7 the Constitutional Court decides for Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law. Also, the Ombudsperson protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.Independence of duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo is article 132 guaranteed by the Constitution. These are two institutions to prove ther has been a violation of human rights and freedoms. The Ombudsperson submits an annual report to the Assembly of the Republic of Kosovo for situation the rights and freedoms of individuals.

In this paper was treated the organization and functioning of the Ombudsperson Institution, basic Principles of Ombudsperson's activity and the competences, the transfer of the competences by international to the local government, legal infrastructure for the promotion and protection of human rights and fundamental freedoms.

Ombudsperson Institution in Kosovo

Today, the values of democracy, open society, respect for human rights, and equality are becoming recognized all over the world as universal values. Where there is democracy there is a greater possibility for the citizens of the country to express their basic human qualities, and where these basic human qualities prevail, there is also a greater scope for strengthening democracy. Peace and freedom cannot be ensured as long as fundamental human rights are violated. Similarly, there cannot be peace and stability as long as there is oppression and suppression. It is unfair to

seek one's own interests at the cost of other people's rights. Truth cannot shine if we fail to accept truth or consider it illegal to tell the truth [1].

Human rights protection is a strong and developing theme worldwide. There is a higher expectation of governments that they will respect and promote human rights. That requires a multifaceted response involving the parliament, courts, tribunals, executive agencies, oversight bodies, the media and non-government organisations [1, 9]. According to Omari L and Anastasia, in constitutional guaranties for defending of essential human rights and freedom, besides for basic guaranties (terms and basic instruments for the existence of the rights) and procedure guaranties (offered by common constitutional law), there is a third category, special right, which completes the meaning of the first two categories. According to them this special guarantee for defending of the essential human rights and freedom is the Attorney of the People [2,105]. Content of the Constitution clearly expresses of this new authority for resolving of the conflicts for protection of human rights and human dignity toward the abuse of public administration [3, 116].

Regulation No. 2000/38 on the establishment of the Ombudsperson institution in Kosovo, which provided the institution with a mandate to investigate to receive and investigate complaints from any person or entity in Kosovo concerning human rights violations and actions constituting an abuse of authority by the interim civil administration or any emerging central or local institution. The Ombudsperson shall give particular priority to allegations of especially severe or systematic violations and those founded on discrimination. In this section, 'actions' include acts, omissions and decisions. The jurisdiction of the Ombudsperson shall extend to the territory of Kosovo. The Ombudsperson may also offer his or her good offices with regard to cases involving Kosovars outside the territory of Kosovo. The Ombudsperson shall not have jurisdiction to deal with disputes between the international administration and its staff [4; 3].The Ombudsperson Institution in Kosovo was established in June 2000 with the mandate to 'promote and protect the rights of individuals and legal entities, as well as ensure that all persons in Kosovo are able to exercise effectively human rights and fundamental freedoms' in accordance with international human rights standards.The first Ombudsperson to lead the institution was Mr. Marek Nowicki appointed in July 2000, who served for five years until the end of 2005 [5; 6].

According to Article 1 paragraph two Regulation No. 2006/6 on the Ombudsperson institution in Kosovo provide that the Ombudsperson Institution shall provide accessible and timely mechanisms for the review of actions constituting an abuse of authority by the Kosovo Institutions and provide recommendations for redress [6, 1].

Regulation No. 2007/15 Amending UNMIK Regulation No. 2006/6 on the Ombudsperson Institution in Kosovo, relieve the process of appointment of the Ombudsperson and the Deputy Ombudspersons, and define the term of office of the four (4) Deputy Ombudspersons [7, 5; 8, 6]. In 2006, the responsibility for enabling the work of the Ombudsperson Institution was transferred to the local government, with the mandate to select and appoint the Ombudsperson being given to the Kosovo Assembly.Until a local Ombudsperson was selected by the Kosovo Assembly, Mr. Jashari was appointed as Acting Ombudsperson in January 2006. With the declaration of Kosovo s independence in 2008, the Kosovo Constitution specifies that the Ombudsperson Institution is an independent institution with the mandate to monitor, defend and protect the rights and freedoms of individuals from unlawful or improper acts or failures to actof publicauthorities [9; 6].

Ombudsperson Institution is composed of: Ombudsperson, five (5) Deputy Ombudspersons and Staff of the Ombudsperson Institution [10; 5]. In year 2009 elected the first Ombudsman of Kosovo citizen with 5-year term.The Ombudsperson is elected by the Assembly of Kosovo by a majority of all its deputies for a non-renewable five (5) year term. Any citizen of the Republic of Kosovo, who has a university degree, high moral and honest character, distinguished experience and knowledge in the area of human rights and freedoms, is eligible to be elected as Ombudsperson.The Ombudsperson and Deputy Ombudspersons shall not be members of any political party, exercise any political, state or professional private activity, or participate in the management of civil, economic

or trade organizations. The Ombudsperson shall be immune from prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of responsibilities of the Ombudsperson.The Ombudsperson may be dismissed only upon the request of more than one third (1/3) of all deputies of the Assembly and upon a vote of two thirds (2/3) majority of all its deputies [11; 134]. Relying on the analysis of the Law Framework on the Law No.03/L-195 on Ombudsperson and interviewing of the management and the Institution of the Attorney of the People, there are law vacuums which are of material and procedure nature [12].

The Law on the Ombudsperson, by being a legal mechanism which sanctions protection, monitoring and promotion of human rights and freedoms when they are not respected by the public institutions, has succeeded to strengthen the voice of the Ombudsperson, as well as to create a new spirit in the interconnecting triangle of the human rights and freedoms: The Ombudsperson Institution-public institutions-citizens [13; 12].

The activity of the Ombudsperson

A European Ombudsman, elected by the European Parliament, shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. He or she shall examine such complaints and report on them. In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution, body, office or agency concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution, body, office or agency concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any Government, institution, body, office or entity. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not. The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries. The Ombudsman elected after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment. The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct [13, 228].The Ombudsman may find maladministration if an institution fails to respect fundamental rights, legal rules or principles, or the principles of good administration [2].

The Ombudsperson of Kosovo monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.The Ombudsperson independently exercises her/his duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo. Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law [14, 132].

Also, Law on Ombudsperson outlines his activity of legal mechanism for protection, supervision and promotion of fundamental rights and freedoms of natural and legal persons from illegal actions or failures to act and improper actions of public authorities, other bodies and organizations exercising public authorizations for their account [15, 1]. Article 3 of Law No. 03/L — 195 on Ombudsperson provides that Ombudsperson is an independent institution that is governed by the principles of impartiality, confidentiality and professionalism. Based on the provisions of this Law apply to protect the rights, freedoms and interests of all persons in the Republic of Kosovo and abroad from illegal actions or failure

to act of the bodies of public authorities of the Republic of Kosovo. [16, 3]. Also, the Code of ethics of the Ombudsperson Institution No. 01/2011 Article 9 provides that in cases that staff members of the Ombudsperson Institution handle complaints and make decisions, they shall do so based on the principles of equal treatment of individuals and groups [17, 9].

During their work and handling of complaints, the staff members of the Ombudsperson Institution shall not give up before difficulties or fear of pressure or difficulties they may encounter, whether these pressures or difficulties arising from administration officials or public or private persons [18, 11].

With regard to increase of the number of conducted cases the Attorney of the People contributes in improvement of respect for the human rights and freedom from public administration in Kosovo cases.

Competencies of the Ombudsperson

Article 135 paragraph 1 and paragraph 2 of the Constitution of the Republic of Kosovo it provide Competencies of the Ombudsperson in connection with legislation to submit an annual report to the Assembly of the Republic of Kosovo.Upon request of the Assembly, the Ombudsperson is required to submit interim or other reports to the Assembly. Upon the request of the Ombudsperson, the Assembly shall permit the Ombudsperson to be heard [19, 135]. The Ombudsperson presents to the Assembly of Kosovo the report for the previous year till 31 March of following year. The Ombudsperson presents the report in plenary session, in which it is discussed [20, 27] to recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation [21, 16].

Competencies of the Ombudsperson in connection with administrative bodies has the power to investigate complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Laws and other acts, as well as international instruments of human rights, particularly the European Convention on Human Rights, including actions or failure to act which present abuse of authority. The competences of the Ombudsperson extend to the entire territory of the Republic of Kosovo. In exercising his/her functions, the Ombudsperson can provide good services to the residents of the Republic of Kosovo and other persons who are outside the territory of the Republic of Kosovo The Ombudsperson has the power to investigate, either to respond to complaint filed or on its own initiative (ex officio), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms as determined by the Constitution, laws and other acts, as well as international instruments on human rights If the Ombudsperson during the investigation conducted observes the presence of criminal offence, than he/she informs competent body for initiation of investigation. If the Ombudsperson starts procedure on his/her own initiative or if any other person on behalf of the damaged person with the submission addresses to the Ombudsperson for initiating of the procedure, the consent from the person whose rights and freedoms have been violated is necessary. Exceptionally, in case the damaged party has died or cannot provide his/her consent due to any other reason, it should be required from the cosest relatives to him/her and in case none of them exists or contact is impossible, consent is not needed. When the Ombudsperson initiates procedure on his own initiative regarding the violation of rights and freedoms to a greater number of citizens, children or persons with lost abilities for action, consent required by the person and due to any other reason [22, 16].All authorities are obliged to respond to the Ombudsperson on his requests on conducting investigations, as well as provide adequate support according to his/her request. Refusal to cooperate with the Ombudsperson by a civil officer, a functionary or public authority is a reason that the Ombudsperson requires from the competent body initiation of administrative proceedings, including disciplinary measures, up to dismiss from work or from civil service [23, 23]. In case when the institution refuses to cooperate or interferes in the investigation process, the Ombudsperson shall have the right to require from the competent prosecution office to initiate the legal procedure, on obstruction of performance of official duty [24, 25]. If during the investigation,

the Ombudsperson determines that the execution of an administrative decision may have irreversible consequences for the natural or legal person, he/she can recommend to competent authority to suspend execution of the decision until completion of investigations relating to this issue.The Ombudsperson has access to files and documents of every institution of the Republic of Kosovo and can review them on cases that are under review and under this Law, may require any institution ofthe Republic of Kosovo and their staff to cooperate with the Ombudsperson, providing relevant information, including a copy of full or partial file and other documents upon request of the Ombudsperson. Officials of the Ombudsperson Institution may, at any time and without notice, enter and inspect any place where persons are deprived of their freedom and other institutions of limited freedom of movement and can be present at meetings or hearing sessions where such persons are included. Officials of the Ombudsperson Institution may hold meetings with such persons without the presence of officials of respective institution. Any kind of correspondence of these persons with the Ombudsperson Institution is not prevented or controlled. [25, 16,].Ombudsperson may also publish special reports through media relating to violation made by the body, if the latter, after repeated requests did not respond appropriately to his proposals and recommendations [26; 28]. Law No. 03/L — 19Article 16 provides that Ombudsperson has the responsibilitie to recommend promulgation of new Laws in the Assembly, modification of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo [27, 16].

Competencies of the Ombudsperson in connection with judiciary may provide general recommendations on the functioning of the judicial system. The Ombudsperson will not intervene in the cases and other legal procedures that are taking place before the courts, except in case of delays of procedures. The Ombudsperson may appear in the capacity of the friend of the court (amicus curiae) in judicial processes dealing with human rights, equality and protection from discrimination. The Ombudsperson shall also exercise his/her competences through mediation and conciliation [28, 16]. The Ombudsperson may refer matters to the Constitutional Court how:

a) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and Regulations of the Government;

b) the compatibility with the Constitution of municipal statutes [29, 113].

A referral that a contested act by virtue of Article 113, paragraph 2 of the Constitution shall indicate, inter alia, whether the full content of the challenged act or certain parts of the said act are deemed to be incompatible with the Constitution.A referral shall specify the objections put forward against the constitutionality of the contested act [30, 29]. Relying on the legal provisions, the Ombudsperson may file a complaint with the Constitutional Court regarding a case which he/she handles. The complaint with the Constitutional Court may be filed only when:

a. Upon a prior approval of the complainant; and

b. A prior investigation has been carried out, whose result is a recommendation to address the Constitutional Court [31, 49].

Ombudsperson refuses the request when procedures for a case are being held in judicial or other competent bodies, except in cases specified by this Law [32, 20]. Ombudsperson Institution were addressed to the Constitutional Court related to several cases, where some of them were accepted some not. For example, Case No. KO 119/10 Applicant Ombudsperson of the Republic of Kosovo for Constitutional Review of Article 14, paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law on Rights and Responsibilities of the Deputy, No. 03/L-111, of 4 June 2010. The Applicant requests the annulment of Article 14, paragraph 1.6, and Articles 22, 24, 25 and 27 of the Law on Rights and Responsibilities of the Deputy, No. 03/L-111, of 4 June 2010. The Court Unanimously Holds the Referral admissible; Concludes that Article 14, paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law on Rights and Responsibilities of the Deputy, No. 03/L-111, of 4 June 2010, is not compatible with Articles 3.2, 7 and 74 of the Constitution of the Republic of Kosovo. Holds that Ar-

ticle 14, paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law on Rights and Responsibilities of the Deputy, No. 03/L-111, of 4 June 2010, is null and void. Holds that the provisions of the Court's interim order of 18 October 2011 suspending the implementation of Article 14, paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law on Rights and Responsibilities of the Deputy, No. 03/L-111, of 4 June 2010, and most recently extended on 20 October 2011, becomes a permanent order of the Court [Judgment in Case No. KO 119/10 Applicant Ombudsperson of the Republic of Kosovo Constitutional Review of Article 14, paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law on Rights and Responsibilities of the Deputy, No. 03/L-111, of 4 June 2010. Pristine, 8 December 2011 Ref. No.: AGJ165/11 Constitutional Court it came to the Conclusion that by determining the right to supplementary pension for the deputies of the Assembly of Kosovo in the amount of 50%, 60% or 70% of the actual basic salary of the deputy, depending on the number of mandates of the deputy spent in the Assembly and by determining the age of 55 as the other essential condition to gain the right to supplementary pension, it appears that the Assembly unreasonably deviated from the general rules of gaining the right to a pension set forth with UNMIK Regulation No. 2005/20 and the Law No. 03/L-084 of the Assembly of Kosovo. In this Referral it appears that the pensions to be paid to the retired Deputies are distinctly disproportional with the average pensions in the country. The constitutional order is based on the principles of democracy, equality, non-discrimination and social justice. The Court should also note that the Law on the Rights and Responsibilities of the Deputy, by determining pensions to the scale of 50%, 60%, and 70% of the current salary of the deputy has set pensions that will be 8–10 times higher than basic pensions that are also paid by Kosovo Budget. Therefore, it must be concluded that Article 14, paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law on Rights and Responsibilities of the Deputy, No. 03/L-111, of 4 June 2010, are not compatible with the Constitution of the Republic of Kosovo. The Court's decision does not prevent the Assembly from enacting pension legislation for members of the Assembly nor does it prevent the Assembly from enacting legislation compensating families of members of the Assembly from being compensated in an appropriate amount if the deputy dies or is injured while serving as long as the Assembly considers the requirements of the Constitution in enacting such legislation].

Principles of Functioning of the Ombudsperson

Human rights principles provide a set of values to guide the work of governments and other political and social actors. They also provide a set of performance standards against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures.On the other hand, without good governance, human rights cannot be respected and protected in a sustainable manner. The implementation of human rights relies on a conducive and enabling environment. This includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population [2].

Ombudsperson is an independent institution that is governed by the principles of impartiality, independence, pre-eminence of human rights, confidentiality and professionalism [32, 3]. Independece of the Ombudsperson of safeguarded by constitution in Chapter XIIof the Constitution of the Republic of Kosovo how Independent Institution.

The Ombudsperson Institution is financed from the Budget of the Republic of Kosovo. Regardless of the provisions of other Laws, the Ombudsperson Institution prepares its annual budget proposal and submits it for approval to the Assembly of the Republic of Kosovo, which cannot be shorter than previous year approved budget. Budget may be shortened only by the approval of the Ombudsperson. The Ombudsperson Institution independently manages with its own budget and is subject to internal and external audit by the Auditor General of the Republic Kosovo [34, 35]. Also, the Code of ethics of the Ombudsperson Institution provides that Impartiality and independence this principle provides that during their work, staff members of

the Ombudsperson Institution shall perform their duties impartially, independently, objectively and professionally, they shall not be influenced by outside interferences.Also, they must take into account and impartially shall asses every kind of information on the issues they handle in order to achieve the right conclusions [35, 3].The code promotes moral values and professional ethics, as well as the quality of the work performed by the staff members of the Ombudsperson Institution to serve the citizens.The following are some principles: Staff members of the Ombudsperson Institution should have high standards of integrity, including, honesty, verity and justice. They should faithfully follow the truth without fear and without being influenced by political, social, religious or economic views of the persons they meet while performing their duty. They shall keep their moral image clean and should avoid behaviour and actions which affect authority and image of the Ombudsperson Institution on the front of public opinion. Transparenca this principle provide that Staff members of the Ombudsperson Institution must perform their duties in a transparent manner. They must maintain the confidentiality of the information they posses without affecting the rights deriving from the Law on Access to Official Documents. Effectiveness and quality this principle provide that the staff members of the Ombudsperson Institution shall accomplish their duties in the best possible manner and work in order to achieve qualitative and quantitative results considering the public interest, as well as the principles of the Institution's mission. Also, the Code provide that Staff members of the Institution should be professional and accountable for their decisions and actions. The staff members during their work should demonstrate modesty, seriousness, integrity and must do the right assessment based on their knowledge and experience.They should not become a prey of prejudices and premeditation and shall not allow that their own private interests to conflict with the duty they perform. Staff members of the Institution shall perform their duties with social sensitivity and act or make decisions taking into account the peculiarities of individuals or groups and demonstrate due respect for liberties and civil rights. In cases that staff members of the Ombudsperson Institution handle complaints and make decisions, they shall do so based on the principles of equal treatment of individuals and groups. A staff member of the Ombudsperson Institution has a duty to host any person who addresses this Institution politely, with courtesy, patience and if need be to explain to him/her the Law on the Ombudsperson Institution and the rules of procedure of the Institution. Ombudsperson staff members should respond to complaints of the parties with professional ethics in order to protect and respect the dignity and personality of the complainant.

Complaints review and requests

Any person who believes that his/her rights and freedoms are violated by any Law, action or inaction, maladministration of authorities, may request from the Ombudsperson Institution initiation of procedure [36,19]. Any complaint submitted to the Ombudsperson should be signed and must contain personal records of the submitter of the complaint as well as all circumstances, facts and evidences on which the appeal is grounded. Submitter of the complaint must declare whether legal remedies are exercised or not, and if so which of these remedies are applied. Any appeal for initiation of the procedure, as a rule, is submitted in writing. The request for initiation of the procedure may be submitted electronically, even verbally, in case it can not be made in writing. [37,20]. Complaints shall be submitted at any office of the Ombudsperson and shall be registered at the main office in Prishtina. Complaints may be filed in person, by mail, e-mail or in urgent cases by telephone. After that, the Admission Office shall assign the case to one of units. Upon the request of the complainant, a complaint may be lodged orally and registered in written by the legal advisor of the institution and shall be signed by the complainant [38, 23; 39, 24]. The same proceedings apply in the cases of meeting with citizens during the "Open Days", as well as when receiving a complaint, request or notification out of Ombudsperson's offices.If the complaint is inadmissible, the legal advisor of the Ombudsperson advices the complainant not to submit it and instead to address it to the competent body or institution. In case the complainant insists to register the com-

plaint with Ombudsperson Institution, the legal advisor shall register the complaint despite the advice to waive it. [40, 27; 41, 28]. After receiving the complaint, the Ombudsperson within ten (10) working days decides for the admissibility of the case as follows to review the case under accelerated procedure, to start full investigation; to reject the complaint because: it is not in the jurisdiction of the Ombudsperson according to this Law the complaint is submitted after the term foreseen with this Law, the complaint is anonymous and undocumented, the complaint represents misuse of the right for filing the complaint, the complainant has failed to ensure information requested by the Ombudsperson, to reject the complaint as groundless to terminate investigation when he/she ascertains that the case was resolved in another way in accordance with the request of the complainant. In all cases above, the Ombudsperson shall notify the party in writing within thirty (30) days from receiving the complaint. The Ombudsman's decision to reject or to refuse the appeal is of a final form [42, 19].The Ombudsperson may at any stage during the processing of a complaint request the assistance of any person, such as the complainant, the respondent party/parties or their representatives, interpreters, legal, forensic, financial or other experts [43, 39]. After accomplishment of investigation, the Ombudsperson in accordance with its powers and responsibilities, issues a decision in which his/her findings and recommendations are unveiled. His/her decision is delivered to the complainant and responsible public authorities. Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, including disciplinary measures, must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question [44, 27; 45, 28].The Ombudsperson offers a series of advantages toward the development of legal administration. It is more confidential and independent. Offers services free of charge, is informal in following the procedure.Offers a series of instruments for correction of violated rights, although without imposing of force, but through the force of arguments. Investigation process, conducted by Ombudsperson is considered more and more accurate and effective comparing to the courts, in fact, reviewing of the cases from Ombudsperson is hold without the hearing sessions, but has a set of actions within the case investigation, which result to be successful such as one authentic court process [46, 43]. In the following lines we shall reflect the review of the cases by the Ombudsperson in Kosovo from1 January 2011 to 31 December 2014.

Table 1. – Signify complaints filed by the citizens, Ongoing cases for investigation, Total number of cases closed by the OI in 2011 to 2014

Statistical presentation of cases for 2011–2014	2011	2012	2013	2014	Total
Total number of filed complaints to OI	1453	1670	2047	2224	7394
Number of complaints found inadmissible		1113	1452	1637	4202
Ongoing cases for investigation from complaints filed by the citizens	546	557	595	587	2285
Ongoing ex officio cases	13	33	21	15	82
Total number of closed cases	269	538	1309	534	2650
Solved positively in compliance with the claimant's request	162	276	587	296	1321
Cases declared inadmissible	86				86
Closed due to lack of interest shown by the claimant, failure of the party		89	195	22	306
Inadmissible, using legal remedies		51	178	81	310
Inadmissible, no violation, misadministration		82	131	81	294
Closed by a report		7	118	12	137
Inadmissible, failure to use legal remedies		25	80	40	145
Inadmissible, outside of jurisdiction		4	10	1	15
Other	21	7	10		38

Table 1**:** Signify complaints filed by the citizens, Ongoing cases for investigation, Total number of cases closed by the OI in 2011 to 2014 [47, 137, 138, 40; 48, 151, 152, 154; 49, 185, 186, 188]. In chart no: 1 the records from 2011–2014 were compared and published relying on the reports of the Institution of the Attorney of the People, whereas, in the records for the year 2015 are missing, because they are published in 2016 from the same institution. From 1 January 2013 to 31 December 2013, OI received 2047 cases or 23% more in comparison to 2012, for submitting complaints or seeking advices and assistance.Out of them, in 377 cases, Ombudsman or his Deputies met personally with claimants, during the"Open Days"in this reporting period [50, 12].

This chart explains in the best way the role of the Institution of the Attorney of the People, rising of awareness of the citizens about this institution relying on the fact that for four years that is from 1 January 2011 to 31 December this institution had admitted 7.394 complaints from the citizens of Kosovo and 2650 case were closed. The Institution of the Attorney of the People has settled the right for 1.321 citizens whose rights were violated from public institutions. However, the rise of the number of complaints from the citizens is concerning who claim that they rights have been violated from illegal and irregular actions on no actions of public authorities, and other authorities and organizations that exercise public authorities.

The chart explains in the best way the reflection for attempt for violating of the rights and the respecting of essential human rights and freedom in Kosovo.

Recommendations of the Ombudsperson

Within the promotion of the human rights and freedom, the Attorney of the People was always active by giving the recommendations, applying measures and drafting of and completion of the legislative infrastructure. According to Article 135 pragraph 3 of constitution determine that the Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed [51, 135]. The Ombudsperson Institution besides giving its contribution to a number of normative acts from various public institutions at the central level.In 2013, the Ombudsperson has sent comments for the following draft laws: Draft Law on Protection from Discrimination, Draft law on salaries of public officials, Draft law on Final exam and state graduation exam, Draft law on interception of telecommunications, Draft law on the status of Albanian education workers of the Republic of Kosovo from academic year 1990/91 until academic year 1998/99; Draft law on amending and supplementing the Law no. 03/L-195 on Ombudsperson, Draft law on amending and supplementing the Law no. 04/L-033 on Special Chamber of the Supreme Court on issues concerning the Privatization Agency of Kosovo, Draft law on amending and supplementing the Law no. 03/L-19 on Civil Service of the Republic of Kosovo. [52].

The Ombudsman has given and continues to give recommendations to improve the shortcomings and errors noted. Unfortunately though the absence of the influence of the Ombudsman's recommendation to the state institutions is evident, as a large part of though regrettably do not make even the slightest attempt to improve this situation. Failure to apply and ignoring these recommendations by the same institutions that are entitled to apply the laws and create opportunities for the citizens to resolve their problems is extremely concerning.The tendency of different state institutions to minimize the role of independent national institutions in general, either by disregarding their findings or failing to apply their recommendations or even by making unlawful attempts to impair their constitutional independence is very concerning [53, 10]. The Ombudsperson, in order to improve the situation of human rights and freedoms, on all special cases, if violations of rights were found, has made recommendations to all public authorities — ministries, municipalities and other responsible public agencies, through its annual and special reports. In 2013 year, The Ombudsperson for the first time received information or notifications, from several institutions, on implementation of its systemic recommendations. I want to explicitly stress the fact that in this regard there is a positive move, although this is not sufficient. Since law enforcement is the main premise for the functioning of the rule of law in Kosovo, except some modest efforts, lack of law enforcement is the most serious institutional problem

[54, 18]. This is the main indicator for the loss of citizen's trust in the state institutions, for which the application of the law is both a legal and constitutional obligation. Meanwhile, this loss of trust places the Ombudsman in a position that the institution is the receiving end of requests for justice to be delivered. This is happening exactly due to the failure to apply the law in most cases and due to violation of the law in special cases by the majority of state institutions. The Ombudsman will continue to identify and highlight actions or lack thereof, that are either undue or unlawful, by public authorities in order to strengthen the role it has in building a society that is based on the principle that all are equal before the law. However, regardless of all these actions and attempts to improve the situation of human rights and freedoms it must me emphasized that the Ombudsman does not deliver justice. It is the state institutions — the courts — the ones that deliver and apply justice. The state institutions are the ones that should not violate the principles of justice because if they do so then they have damaged the necessary essence for the functioning of a free and democratic society [55, 12].

The legal infrastructure in protection and promotion of human rights and fundamental freedoms in Kosovo

Tore Lindholm"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in the spirit of brotherhood" [56, 41]. Constitution of the Republic of Kosovo article 7 outlines values such as: the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy. Also, referring to the constitution article 21 has determined that human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution. Everyone must respect the human rights and fundamental freedoms of others.Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable. According to Article 22 of constitution human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions: Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, International Covenant on Civil and Political Rights and its Protocols, Council of Europe Framework Convention for the Protection of National Minorities, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment [57, 7; 58, 21; 59, 22]. In Preamble Universal Declaration of Human Rights *expressly stated that: "the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" [60].* However, the Executive Director of the Council for Protection Human of Rights and Freedom, Bexhet Shala, considers that Kosovo in the theory aspect has managed to protect the human rights by approving laws, but in practice the violence of human rights are many. The human rights are mainly violated from the institutions.Kosovo with separated policy, policy uncertainty, with an internal fragility, deficient sovereignty, g, grievous economic-social situation.Their as a large number of the unemployed in Kosovo [3]. Their as a large number of the unemployed in Kosovo, *however* Universal Declaration of Human Rights, article 23 has provide everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment, without any discrimination, has the right to equal pay for equal work. So, everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection [61, 23] Also, International Covenant on Economic, Social and Cultural Rights article 6 has provide that the States Parties to the present Covenant recognize the right to work,

which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual [62, 6].

Human rights problems in Kosovo are of various dimensions and may not be easily and rapidly resolved. The full observance and implementation of human rights and freedoms, according to international standards and conventions, is hindered, in particular, by social, economical, political and cultural problems. Incomes of the vast majority of citizens of Republic of Kosovo are low and for this reason many citizens see it difficult to face prices of goods, services and minimal expenses of consumer basket. Pensions, grants and social assistance are very low and have a negative impact in the opportunities of accomplishing the right to education, health, permanent housing and food as well as to the realisation of other social, economical and cultural rights. As with any other society in transition, in Kosovo, occurrences such as corruption, organized crime and other negative occurrences impact severely the state of human rightsand the democratization of the society in general [63, 12]. Human rights problems in Kosovo deal with civil, political, economic, social and cultural rights and affect both, majority community as well as minority communities.These problems have an impact on human rights and are of complex nature and related to various aspects such as the lack of proper implementation of legislation or lack of appropriate mechanism and budgetary constraints [64, 17] Although there is a solid normative base, as well as mechanisms for protection of human rights and fundamental freedoms, the public authorities of the Republic of Kosovo at the central and local level are still negligent and ineffective and not rarely indifferent towards respect and implementation of citizens` human rights and freedoms, which is a consequence of inadequate implementation of laws [65, 12].

According to researchers from analysis of the law framework and the published reports from the Institution of the Attorney of the People and interviewing of the management of the Institution of the Attorney of the People, it is expressively stated: Disrespecting of the human rights/their violation comes as consequence of the law and public authority that are authorized by the law for its application, but in some cases it is a result of not determingg on time of the sub-laws for application of the law [66].

Conclusion

In conclusion of this paper according to research and analysis of the law infrastructure in Kosovo the human rights and freedom are protected by Constitution, International Acts and by the Law in force. Disrespecting of human rights, their violation comes as e result of non-application of the law by public authorities that are authorized by the law for its application, but in some cases it is also a result of not determinig on time of the sub-law for its application. The Attorney of the People as a mechanism is also qualified as an external control of administration that is focused in surveillance of the application of the law form public institutions.

The role of the Attorney of the people is protection of human rights and freedom of legal individuals and persons from the illegal and irregular actions or non-actions of public administration. The Attorney of the People contributes in improving the respect toward the human rights and the increase of the number of the cases and investigations and reports on the violation of the individual and legal persons.

— All the public institutions should apply the laws and set out on time sub-law for application of the law.

— All recommendations given by the Attorney of the People to be applied by institutions, for non-applying of recommendations, the Assembly of Kosovo should require responsibility from the ministers of the appropriate units which violate the human rights and freedom.

— The filed cases, comments, and recommendations stated in the report of the Attorney of the People forwarded to the Assembly of Kosovo should be seriously taken into consideration and require responsibility form the institution for not meeting the same.

— The courts should offer priority to the cases filed by the Attorney of the People that are in connection with protection of human rights and freedom.

References:

1. The Constitution of the Republic of Kosovo (adopted on 9 April 2008) with Amendments I – XXII (Official Gazette of Republic of Kosovo no.25, date 7 September 2012) end Amendment XXIII (Official Gazette of Republic of Kosovo no.7, date 26 march 2013).
2. The Universal Declaration of Human Rights 10 December 1948.
3. The Universal Declaration on Human Rights, Common Standard of Achievement, published by Gudmunder Alfredsson and Asbjorn Eide.
4. International Covenant on Economic, Social and Cultural Section 6 Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entered into force, more 3 January 1976.
5. Law No. 03/L – 195 on Ombudsperson Official Gazette of the Republic of Kosova/Pristina: Year V/No. 80/27 August 2010.
6. Law No. 05/L –019 on Ombudsperson article 5 Official Gazette of the Republic of Kosova/No. 16/26 June 2015, Pristina.
7. Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo.
8. Regulation No. 2000/38 on the establishment of the Ombudsperson institution in Kosovo 30 June 2000.
9. Regulation No. 2006/6 on the Ombudsperson institution in Kosovo.
10. Regulation No. 2007/15 Amending UNMIK Regulation No. 2006/6 on the Ombudsperson Institution in Kosovo, March 2007.
11. Internal Rules of procedure of the Ombudsperson Institution of Kosovo March 2011.
12. The Code of ethics of the Ombudsperson Institution 2011.
13. Eleventh Annual Report 2011 addressing the Assembly of Kosovo published by: The Ombudsperson Institution, Pristina, 2012.
14. The Ombudsperson Institution Twelfth Annual Report 1 January – 31 December 2012 addressing the Assembly of Kosovo, 2013.
15. The Annual Report 2013 No. 13, addressing the Assembly of Kosovo, published Ombudsperson Institution, March 2014.
16. Annual Report 2014 No. 14 addressing the assembly of Kosovo published: Ombudsperson Institution, Prishtina, 2015.
17. An insight into the work of the Ombudsperson Institution, Prishtina, June 2013.
18. Strategy and Action Plan on Human Rights of Republic of Kosovo 2009–2011.
19. Judgment in Case No. KO 119/10 Applicant Ombudsperson of the Republic of Kosovo Constitutional Review of Article 14, paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law on Rights and Responsibilities of the Deputy, No. 03/L-111, of 4 June 2010. Pristine, 8 December 2011 Ref. No.: AGJ165/11.
20. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01, Article 228.
21. European Union, 2011, European Ombudsman, Problems with the EU? Who can help you, p.5 http://www.ombudsman.europa.eu, accessed January 2014.
22. Hasan Isa, Deputy Ombudsperson in an interview with the co-authors of this paper dated March 5, 2014.
23. Omari L.& Anastasi A., Constitutional law, publishing house ABC, Tirana, 2008.
24. Shala Behxhet in the interview given to Radio Free Europe in chronically Kosovo away countries that respect human rights prepared by Arton Konushevci 10.12.2013 http://www.evropaelire.org/content/article/25195996.html accessed January 2014.

25. Toska Elsa, Ombudsman – constitutional institution, (the dissertation for his degree protection ‘’doktor’’University of Tirana’’ 2012) http://www.doktoratura.unitir.edu.al/wp-content/uploads/2012/09 accessed January 2014.
26. Prof John McMillan, Commonwealth Ombudsman, The Ombudsman's role in human rights protection – an Australian Perspective, Australia Paper to the 11th Asian Ombudsman Association Conference 2–5 November 2009 Bangkok, Thailand, p.9.
27. United Nations Human Rights Office of the High Commissioner, Good Governance and Human Rights, http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx
28. Tenzin Gyatso, H. H. the XIVth Dalai Lama, Human Rights, Democracy and Freedom, http://www.dalailama.com/messages/world-peace/human-rights-democracy-and-freedom.

Section 7. Criminal law

Himaloya Saha,
Lecturer, Southeast University
Dhaka, Bangladesh.
E-mail: Himaloya_saha@hotmail.com

Confessional statement in bangladesh: safeguards and drawbacks in the procedure of recording it

Abstract: Regulated by Section 164 and read with Section 364 of the Code of Criminal Procedure, 1898, the provision of giving and recording of confession is a unique feature of Criminal Justice in Bangladesh. This paper makes a thorough study of the aforementioned sections of law that provides with description regarding who would give the confession, when would the confession be given, to whom the confession may be given, how is the confessional statement is recorded and the legal requirements for the purpose of recording a valid confession. The paper also analyses the safeguards and guidelines mentioned in the legal provision and leading cases and points out the numerous drawbacks in the procedure of the recording of confession. Finally, after a meticulous study of the drawbacks, the paper suggests some recommendations to remove the ambiguity mentioned in the drawbacks and increase the transparency of the recording of confession.

Keywords: confession, criminal procedure, confessional statement, procedural law.

Introduction

The word "Confession" hasn't been specifically defined in any statute [1, 12].Confession in simple words means, 'the admission of the guilty in terms of the offence' [2, 2]. It must either declare in terms of the offence or significantly to all the facts which constitute the offence [3]. In Bangladesh, It is recorded with the authorized Magistrate in the manner provided in the Code of Criminal Procedure, 1898. It is a common conception that the police are not believed as trustworthy and provided the power of recording confessions is given to the police, they are more prone to misusing such [4; 6]. Some overachieving police officer may, in the apparent exercise of power, torture the accused to extort confession or fabricate the confession [4; 6]. A confessional statement single-handedly can ascertain the basis of conviction against its maker [5]. Thus the magistrate should be extremely cautious and well-versed with the procedure and principles governing the recording of confessional statement, and act in good faith in exercising their powers with regards to such.

Interpretation and Scope of the Legal provisions

Sections 164 and 364 of Bangladesh's Code of Criminal Procedure, 1898 (Code) provide how the confession should be recorded and signed [6, S. 164]. Sections 24 to 30 of the Evidence Act, 1872 deal with admissibility and inadmissibility of confessional statements [7, s. 24 — s. 30]. Also in many judicial pronouncements, the principles have been laid down for facilitating the recording of confessional statement and its creditability, its admissibility and use as evidence and forming the basis of conviction.

Section 164 of the Code elaborately points out who can make a confession, to whom is it made, when can they make it and what conditions are to be followed by the concerned Magistrates in order to make a valid confession [6, s. 164]. Any accused may make a confessional statement. The confessional statement can be made at any time during the investigation or any time after or before the commencement of inquiry or trial. Any confession

made under such circumstance would not relate to the aforementioned section [8]. Any Metropolitan Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Government may, if he is not a police officer, record any statement or confession made to him in the course of an investigation [6, s. 164]. It's immaterial whether they have the jurisdiction of the case or not. It has been specifically barred by this provision that no police officer can record a confession [9, 114].

The Magistrate is required to disclose his identity before examining the accused brought before him [10]. A Magistrate must, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so, it may be used as evidence against him [11, 38]. The Magistrate must be satisfied that confession is voluntary and record of the confession must indicate that it was voluntary. The confession must be signed by the accused and the Magistrate [12].

A confessional statement is incriminating evidence against its maker unless its admissibility is excluded generally [9, 115]. Conviction can be based solely on confessional statement under 164 if it is true and voluntary [13].

Safeguards to prevent recording an illicit Confession in the Procedure

It is commonly and generally assumed that the confession has been extracted by police torture of the accused in remand [14]. So to deal with this complaint, there are some preventive measures in the concerned provision of the Code, either expressed or implied.

Firstly, the language "may record his statement or confession" as used in section 164 of the Code of Criminal Procedure, indicates that a Magistrate is not bound to record the confession. It means that the Magistrate should record the confessional statement only when he believes that the maker is willing to make the confessional statement voluntarily and to give a true statement of the occurrence confessing his involvement therein. But when it appears to the Magistrate that the accused has been compelled to make the confession by torture or threat or influence or by any other manner, the magistrate should not proceed to record the confessional statement [29].

Secondly, the magistrate has to explain to the person making the confession that he is not bound to make such a confession and if he does so it may be used as evidence against him [11, 38]. He has to give the warning in a way that the accused making the confession fully understands the warning [15]. This warning is a statutory obligation [6, s 164; 3] on the Magistrate and failure to comply with it renders the confession inadmissible as evidence [7, s. 29].

Thirdly, the confession must be voluntary [16, 296]. The term voluntary means one who does anything of his own free will. Magistrate recording confession must make query and satisfactory exercise in order to determine the reason as to why the prisoner is bent on confessing his guilt [17, Para 15]. If he finds the reason to be well-grounded and the prisoner has a valid intention to come clean, he then should record the confession. The accused should be assured that he would be given all sort of protection against torture or pressure in case he refuses to give a confession [18, 116]. Moreover the accused should also be asked what treatment he received in the custody he was produced from. In another case, it was held that the shivering condition in which the accused made confession indicated he was subjected to threat and torture before he was produced for recording the confession and thus it was not voluntary [19]. Proving that a confession is voluntary is of immense importance and is one of the most effective ways in which confession can be recorded without inducement or threat or bribe [20].

Lastly, it is mandatory that the confession statement must be signed by the accused and the Magistrate [6, s. 364; 2]. If it is not signed by the accused or attested by his marks, it becomes inadmissible as evidence [21, 298]. Confession should be recorded in the words of the accused, but it is not always correct to say that confession not recorded exactly in the words of the accused is inadmissible [22. Para 9]. It is also necessary that the Magistrate shall certify that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused [6, s. 164; 3].

Drawbacks of the Procedure

It might seem that the procedure for recording a confession is rigid and foolproof but when one examines closely, there are many drawbacks. Al-

though it has been well-established in the case laws that a Magistrate is not to record the confession until the lapse of such time as he thinks necessary, in order to remove the fear of police from the mind of the accused [21, 297]. But it is still very vague considering that there are no rules as to what minimum and maximum time is to be given to remove the fear -it might be a month or even three hours. Leaving this on the discretion of the Magistrate gives scope for abuse. As this rule is not incorporated in the Code, sometimes the Magistrate has no idea or acumen that it was his legal duty to remove the other inducement and influence of the police completely from the mind of the accused before recording the confession [4; 6]. In addition, there is no provision in the law saying that the accused who has given confession should be sent to judicial custody and not police custody. When an accused is under threat of being sent back to the police custody, he is more likely to make confession out of fear. His statement is such a position should not be considered as voluntary [23]. Nonetheless it was held in the case of State vs. Wazirthat after the recording of confession, the accused should be sent to judicial custody and not to the police custody [24].

Thirdly, there is no specific hard and fast rule as to how warning must be given to the accused before the confession to be recorded or as to whether anytime would be given for reflection in the Code. In the case of RatanKha &others vs. The State, full three hours time was taken in both reflection and recording of confession, which was considered as sufficient compliance with the requirement [25].

To determine whether a confession is voluntary or not, there is no way but to depend on the satisfaction of the Magistrate as provided in the section 164 (3) of the Code [21, 119]. This is vague and intangible and is again totally dependent on the discretion of the Magistrate. There are no rules or regulations as to check the voluntariness of the confession [26]. Satisfaction of a person is a state of mind and it might differ from one person to another [21, 119]. The Magistrate may not have taken any genuine effort to find out the real character of the confession [27]. Therefore it puts the determining of the voluntariness of the confessional statement on dangerous foothold. The Constitution of the People's Republic of Bangladesh, [Article 35 (4)] provides that "no person accused of any offence shall be compelled to be witness against himself" [28, article 35]. If, in fact, confessions are obtained by compelling the accused in any manner, it is clearly violation of the constitutional right guaranteed to the accused. Therefore, the recording Magistrate must be careful in ascertaining whether the accused placed before him is making a voluntary confessional statement.

Recommendations

After thorough research and study on the safeguards, conditions and drawbacks of the recording of a confession would like to suggest some recommendations.

There is no provision mentioned the relevant laws to take an oath before making a statement or confession. The system of administering oath to the accused or any other person who wished to give a confession or a statement should be introduced. This will render the confession or statement as more authentic and credible

There should be mandatory provision in the Code saying that the accused who has given confession or anyone who has denied giving a confession should be sent to judicial custody and not police custody. This would play a great role in eliminating fear of police pressure and torture from the minds of the accused.

There should be a specified manner and systematic rules and regulations that the Magistrate must follow while giving the statutory warning mentioned in Section 164 (2).The maximum and minimum time limit for reflection should also be given. There should be some tangible manner in which the voluntariness of the confession can be determined instead of leaving it on the satisfaction of the Magistrate. Provision should be made for introduction of electronic audio-visual equipment for the purpose of recording confession [9, 116].

In addition, The Magistrate should explain to the accused his Constitutional rights under Article 22 (1) of the Constitution well as the provision of section 303 of the Code about his right to consult a lawyer before recording his confession [21, 118].

Conclusion

Confessional statement has vast evidentiary value it alone can form the basis of conviction against its

maker. Therefore the procedure to record it, for instance the giving of warning of its effect, the choice of whether the accused wants to give it or not, determining whether it is voluntary or not, has to be cautiously followed. Although the provision of Section 164 read with Section 364 elaborately explains the procedure, it misses out some major details of grave importance. The immense discretionary power given to the Magistrate as to whether to record the confession or how the warning should be given or how much time should be given to the accused for reflection after warning, or the voluntariness of the confession, should be controlled in order to avoid the abuse of such power. Some recommendations may include administering oath before and provision of audio-visual technology while recording the confession. Furthermore incorporation of some guidelines in the Code for the Magistrate to determine voluntariness of confession and methods of giving warning is of immediate necessity. Thus if these recommendations are incorporated the recording of a confession would be a much transparent method and the chances for its abuse will decrease.

References

1. Gazi Delwar Hossain, Manjur Hossain and Saifur Rahman Choudhury, 'The Legal Principles and Injustices of the Doctrine of Confession: An Analysis of the Judicial Process in Bangladesh, (2014), 4 (1) African Journal of Law and Criminology 11–16.
2. Clifton Perry, 'Admissions and Confession' (2012),12 The Journal of Philosophy, Science & Law 1–12.
3. State vs. Baiduzzamam 25 DlR 41.
4. Saul M. Kassin, Steven A. Drizin and others, 'Police-Induced Confessions: Risk Factors and Recommendations' (2010), 34 (1) Law Human Behavior 3–38.
5. Shaila Hasan, 'About Confessional Statement' (2009), http://shailallb.blogspot.com/2009/02/about-confessional-statement.html data accessed on 11th September 2015.
6. The Code of Criminal Procedure, 1898, (the Code).
7. The Evidence Act, 1872.
8. Hem Raj vs. State of Ajmer [1954] SC (1954) AIR 262.
9. Md.Abdul Halim, Text book on Code of Criminal Procedure (3rd edition, CCB Foundation 2006).
10. State vs. Abul Hashem [1998] 50 DLR 17.
11. Abhinav Prakash, Universal law Series: Code of Criminal Procedure (1st edition, Universal law Publishing 2007).
12. Said Begum vs. State (1958)11DLR (WP) 22.
13. Abdur Rashid v State (1938) BLD206.
14. Sayed Taufic Ullah, ' Police Remand and the Declaration of Human Rights' (2013) < http://www.write3.com/details/5374 data accessed on 12th October 2015.
15. State v Jatindra Kumar Sutradhar (1968)20 DLR52.
16. Ibraheem, Ojo Tajudeen, 'The Relevance of Confessions in Criminal Proceedings' (2013), 3 (21) International Journal of Humanities and Social Science 291–300.
17. Kuthu Goala vs. the State of Assam, 1981 CriLJ 424.
18. R. V. KelkarCriminal Procedure (3rd edition, Eastern Book Company1977).
19. Sanwar Hossain vs. State (1995) 45 DLR 489.
20. David Anthony Brooke, 'Confessions, Illegally/Improperly Obtained Evidence and Entrapment ' (1999) http://discovery.ucl.ac.uk/1349807/1/367012.pdf > data accessed on 14th October 2015.
21. Ratanlal Ranchhod das, Dhirajlal Thakore, The Code of Criminal Procedure (17thEdition, wadhwa and Company nagpur1930).
22. Nausher Ali Sarder and others Vs. State, 39 DLR (AD) 194.
23. Nazrul Islam vs. State 45 DLR 164.
24. State vs. Wazirthat1960) 13DLR WP 5.

25. Ratan Kha Rattan and others vs. The State1988) 40 DLR 186.
26. Abdul Bari Sarker v Bangladesh (1957) 9 DLR 46.
27. Azad Shaikh vs. State (1989) 41 DLR 62.
28. M. A. Salam, The Constitution of the People's Republic of Bangladesh (first edition, CIJ2003).
29. Ashraful Islam, ' Confessional Statement'
30. http:/www.jatibd.org%2FConfessional%2520Statement-3.doc&ei=YlisToDqKNHOrQfo4ajQDA&usg=AFQjCNFPHh_Kl4yXxzJ9b4ip7oDS56K_rA > Last visited on 24th November, 2015.

Section 8. Political institutes, processes and technologies

Ba Alawi Murad Mohammed,
Kursk State University
PhD-Student, Department of sociology and political science
E-mail: Baalawi@mail.ru

Five years after the revolution. Yemen plunged into chaos

Abstract: The article examines the Situation in Yemen five years after the Revolution. The transitional period and its Problems have been showed. In the conclusion it says that a solution can only be found in a political way.

Keywords: Yemen, Arab Spring, Al Houthi movement, revolution, Saudi Arabia

In late 2010, early 2011, in the Arab world there have been massive protest movements, called "Arab Spring", as a result long-term leaders were overthrown. Five years after the start of the Arab revolutions, the Middle East has become a center of world attention, whose fate is determined by the dominant Western powers. The political situation in the region is very complicated, some countries have become an arena of civil wars.

Taking a closer look at the Yemen, the protest movements in the country began in January 2011 demanding the resignation of President Saleh. By that time Saleh had been in power for 32 years. In contrast to the other countries of the Arab Spring the resignation of the Yemeni President took place in accordance with the initiative of the Gulf Cooperation Council (GCC) to resolve the Yemen crisis. Ali Abdullah Saleh agreed to resign as president and delegated all presidential power to vice president Abed Rabbo Mansour Hadi, as immediate presidential elections couldn't be conducted.

In the first phase the agreement elections have been held. On February 21st of 2012 Yemenis went to the polls to choose an agreed candidate for the post of President Abed Rabbo Mansour Hadi. He was elected for a term of 2 years to organize a national dialogue, do political reforms and develop a new constitution. Furthermore, he should prepare the Yemen for new elections in accordance with the GCC initiative, which had been supported by the Security Council resolution of the United Nations [1, 36].

However, five years after the revolution in 2011 the period of transition in Yemen is still very complicated. It is marked by many events that require further analysis for a better understanding of what is happening now and happened in the past.

After a series of protests and escalations in September 2014, to which called Abdul-Malik al-Houthi who is the leader of the movement "Ansar Allah" (Al-Houthi). He condemned the decision to lift subsidies on petroleum products. To protest against corruption, he pointed out the lack of efficiency of the government of Basendua. Al Houthi also delayed the realization of the results of the national dialogue conference. To protest the rebels established several tents in the entries of the capital Sana'a.

Many analysts argue that the demand of al-Houthi for the abolition of the law on removing subsidies on petroleum products is only a pretense to get the support of large sections of the population who are dissatisfied with the government's performance. According to other analysts al-Houthi with his actions aimed to participate in the government. By keeping their weapons, they created a situation like the position of the Hezbollah in Lebanon. Hezbollah is involved in the Lebanese government with complete preservation of their weapons [2, 9].

The Al-Houthi movement is a militant group out of Shiitis and Zaidi, who are living in the north of Yemen in the city of Sade. According to various estimates there are between 10 thousand and up to 100 thousand members. This movement uses a form of peaceful protest but also military methods of struggle. With the help of Iran the armed al-Houthi movement could spread their influence on other cities of the country [3].

The actions of the pro-Iranian movement Al-Houthi on the 21. September 2014 caused a great international political reaction. It is important to emphasize that on this day the Al-Houthi, supported by units of the Yemeni army, which remained loyal to Saleh the former president of Yemen, took control of the capital city Sana'a. Moreover, they captured all state institutions including the military base. As a result of this armed intervention not only the political system of the country changed but also the political map [4, 81].

The International Union for Muslim Scholars (IUMS) condemned the actions of the Al-Houthi movement. Furthermore, the IUMS required to act wiser and put Yemen's interests ahead of any personal interests. "Your future is connected with Yemen, and not with any other country or project," announced the Islamic scholars in a statement [5].

On 21. September 2014 the Yemeni government and the Al-Houthi rebels signed an agreement called "about peace and partnership". The main contents of this agreement are: removal of political tensions, the require to spread the influence of the state and the recovery of the territories occupied by the rebels. Furthermore, they should build a new government with Khaled Bahah as the head of it, which should replace the so-called National Reconciliation. But the armed Al-Houthi movement did not fulfill its obligation. To show their protest against the draft of the new constitution they took over the presidential palace. Because of this president Hadi and the cabinet of ministers submitted their resignation on the 22. January 2015. It is important to emphasize, that after this Hadi cancelled his application of resignation and became president again.

The minister of foreign affairs of Saudi Arabia Al-Faisal announced in his period that Saudi Arabia expected that this agreement would stop the fratricidal war so that the political process could move on. Moreover, he said that he expected resuming all constructions. However he argues that the Shiite rebels do not fulfill their obligations in accordance to the agreement of the 21. September [6].

It is important to mention, that Saudi Arabia focused more on the happenings in Yemen than the other Gulf countries. We argue that this attention did not only appear because of the long border with Yemen but also because of other reasons. On one hand the Al-Houthi movement controls a lot of regions on Yemen's border with Saudi Arabia what could affect them. On the other hand the Al-Houthi movement are loyal to Iran, who is the main geopolitical enemy of Saudi Arabia.

The invasion of the military forces of the Al-Houthi movement and its allies of the former regime in the southern cities jeopardize the capture of the port city Aden. This city is an important point for the Gulf countries as the capture of Aden would threat the main oil transportation routes from this countries to Europe and the US through the strait Bab El-Mandeb. Furthermore the security of Yemen is an important factor for the security in the whole region and any risk of Yemen's security is a threat to the regional stability. Proceeding from this the Arab countries unified in a coalition with Saudi Arabia as a head of it against the Al-Houthi movement and its allies. Already on the 26. March 2015 the the Arab coalition inflicted airstrikes with the Al-Houthis in capital Sana'a and other places as a target.

The coalition led by Saudi Arabia consists of all members of the Cooperation Council of the Gulf countries with the exception of the Sultanate of Oman. The coalition also includes Egypt, Jordan, Morocco and Sudan. The US provides logistical support [7, 13].

Professor of political Sociology at the University of Sana'a Abdul Baki Shamsan argued that the Al-Houthi and the overthrown president Saleh had two different plans. The al-Houthi had no intention to expand more than over the cities Amran and Saada, to become an important player in the Yemeni political life, just the same as the Lebanese Hezbollah. Saleh tries to return to power and his alliance with the Al-Houthi has pushed them to a counterrevolu-

tion. Saleh bares in mind that any solution of Saudi Arabia to resolve the crisis is characterized by flexibility [8].

We need to emphasize that the Al-Houthi never had ambitions to expand outside the scope of its geographic area especially to southern regions. However the former president Saleh's desires to return to power at any cost. So he supported his allies with still loyal to him army units. It is obvious that Saleh wanted to repeat the scenario of invasion in the south in 1994. But this time he just used other methods.

Many political scientists looked very pessimistic on the military operation of the Arab coalition, which is led by Saudi Arabia in Yemen. Due to the new level of escalation they fear a repetition of the Syrian scenario in Yemen.

We have to keep in mind that the termination of war actions and restoration of stability in Yemen can only be achieved through understand the special character of the social structure in the country. Furthermore, an understanding of the history from the components is needed. Because of this it is absolutely necessary to find a solution in accordance with this complex structures.

In our opinion the situation in Yemen should not be resolved by military force. The solution should be found by a political decision and a direct dialogue between all parties of the conflict. It is undeniable that the air strikes of the Saudis weakened the possibilities of the Al-Houthi. In spite of that the Al-Houthi compensate this progress on the ground, as well as they blocked some cities, Taiz.

After the outbreak of the armed conflict in Yemen the terrorist group Al-Qaeda in the face of "Ansar Asharia" came back to presence. This group is a legitimate power in Yemen and is accused to be in touch with the former president Saleh. The terrorist group Al-Qaeda used the chaos in the country to took over the city Al-Mukalla on 2. April 2014. Al-Mukalla is the third largest city in Yemen after Sana'a and Aden. They also captured over several government buildings, including the presidential palace and the headquarter of the second military region [9]. The contact from the former president Saleh to Al-Qaeda has been clearly reflected through the sudden withdrawal of military units loyal to the former president of its camps in the city of Al-Mukalla. This allowed terrorists to take control of the city with a minimum of losses. At the same time military forces, who are loyal to Saleh, are fighting on the side of the Al-Houthi in other Yemeni cities.

Undeniable Al-Houthi and former president Saleh plunged the country into chaos. We can say that the war has led to the restructure of the Yemeni army to the national standard, where Yemenis have found that they do not have a strong national army, who is capable of defending the country and to protect the constitutional rights of citizens.

To sum up today Yemen is living the most difficult period in its recent history. 5 years after the revolution of 2011 the country is plunged into chaos. The political map of the country is divided between three powers: firstly the legitimate power. Secondly Al-Houthi and his allies and thirdly the terrorist group Al-Qaeda. Based on the structure of the Yemeni society, we can say that the solution of the situation in Yemen by weapons is senseless. A solution can only be found through a political way and a dialogue between all the conflict components.

References:

1. Ba Alawi M. M. The Initiative of the Gulf Cooperation Council and the Yemeni revolution//Vestnik VSU. Series: History. Politics. Sociology. 2015. № 1. – P. 38–38.
2. Dzhumeh M. How infiltrated al-Houthis in Sana'a?//Newspaper Al-Quds Al-Arabi. Vol. № 7853. 31.08.2014.
3. Fedorchenko A. The conflict in Yemen. "Expert's talking in MGIMO"//portal MGIMO. Published on 04.29.15. Access: http://www.mgimo.ru/news/experts/document270824.phtml
4. Ba Alawi M. M., Knapp A. M. Causes and consequences of the escalation of the conflict in Yemen//2nd International Scientific Conference "European Applied Sciences: challenges and solutions": Papers of the 2nd International Scientific Conference. May 25, 2015, Stuttgart, Germany. 175 p.
5. The ulema condemned the coup in Yemen//Ansar. Published on 24.09.2014.

6. Access: http://ansar.ru/sobcor/2014/09/24/53515
7. Zuaui N. Media: Arab countries are concerned about the outbreak of violence in Yemen//RIA Novosti. Published on 24.09.2014. Access: http://ria.ru/world/20140928/1025985380.html#ixzz3yxBWdVvl
8. „What about the military object, which was in the house of my brother?" illegal airstrikes from the coalition in Yemen//Human Rights Watch. Printed in the United State of America. 2015. 80 p.
9. Yemen in the 2015: coup and the war//Yemen-press – Al-Jazeera Published on 31.12.2015. Access: http://yemen-press.com/mobile/news64564.html
10. Al-batati S., Kareem F. Affiliate of Al Qaeda Seizes Major Yemeni City, Driving Out the Military//The New York Times. Published on 03.04.2015. Access: http://www.nytimes.com/2015/04/04/world/middleeast/al-qaeda-al-mukalla-yemen.html?_r=1

Telyatnik Tatiana Evgenievna,
Kuban State University,
PhD in Political Science, lecturer,
Political Science and Political
Management Subdepartment
E-mail: neptuneus@yandex.ru

Methods of analysis the visualization of political events on the example of political photos

Abstract: The article talks about the photographs, reflecting the political events, and on methods of analysis of such photos or images. The author of the article draws attention to features of visualization of political events through the media.

Keywords: political events, visual images, political photo, methods of the political analysis, mass media.

Телятник Татьяна Евгеньевна,
Кубанский государственный университет,
Кандидат политических наук, преподаватель,
кафедры политологии и политического управления
E-mail: neptuneus@yandex.ru

Методы анализа визуализации политических событий на примере политических фотографий

Аннотация: В статье говорится о фотографиях, отражающих политические события, и о методах анализа таких фотографий или изображений. Автор статьи обращает внимание на особенности визуализации политических событий с помощью средств массовой информации.

Ключевые слова: политические события, визуальные образы, политическая фотография, методы политического анализа, средства массовой информации.

Современные средства информации с помощью разноплановых визуальных образов, изображений, зрительных объектов освещают актуальные события, формируют наши представления о мире, создают имидж политического лидера, сопровождают публичную политику.

Особенности визуализации в политике отчасти объясняются тем, что одним из наиболее

распространенных видов репрезентации и конструирования властных отношений является визуализация власти и властных отношений в средствах массовой информации [1, 150].

Визуализацию можно отнести к одной из стадий политического анализа. Ученые, занимающиеся исследованием визуальных образов, применяют методику анализа вторичных данных. Сегодня в этом нет никаких ограничений или препятствий: огромное количество снимков в сети Интернет, иллюстрированных журналов делают возможным и потенциальным для изучения даже самую сложную тему в политической науке. Так, например, официальный корреспондент СМИ, а чаще папарацци при фотографировании публичных массовых политических действий должен не только передавать эмоции людей, детали ситуации, но с этической стороны отобразить событие в допустимых рамках освещаемого события, не нарушая ни моральных принципов, ни юридических законов. В ряде случаев фотографии могут содержать отдельные элементы политической действительности, не неся при этом никакой политической нагрузки [5, 161].

Безусловно, фотографии, отражающие политические события, являются ценным эмпирическим материалом для политолога. Фотографии помогают документировать важные события общественно-политической жизни, осуществлять самопрезентацию с помощью идеализированных портретов или спонтанных снимков, фиксировать переломные моменты в жизни человека или всего человечества.

«Культовые снимки» — Парад Победы, уничтожение Берлинской стены, факельное шествие нацистов, часы на Спасской башне Кремля, портрет политического лидера, несут в себе политический смысл и вызывают практически у любого гражданина ассоциативные связи с историей родины, семьи и т. д. Нельзя забывать и о том, что фотография может выполнять провокационную роль. Спонтанная эмоциональная окраска радикально настроенного гражданина может повлиять на умонастроение или характерные действия.

Методика герменевтического анализа, семиотической, структурной и дискурсивной интерпретации может быть использована при более глубоком изучении политических фотографий.

Так, герменевтический анализ предполагает поиск ответов на вопросы о том, кто сделал снимок; какова социальная роль выполняющего работу по съемке и каковы политические взгляды этого человека; в какой ситуации находился этот человек; или, в целом, какова задача, выполняющего фотосъемку. Также учитываются намерения автора снимков, его стереотипы, возможные причины опасений неудачи. Важно понимать, для кого были сделаны снимки, кому они адресуются. Каковы мотивы выбора объекта фотографирования. Есть ли у автора предубеждения или особые симпатии в отношении объекта снимка. Важно и необходимо определить каков тип фотографии — официальное пропагандистское фото для прессы или репортерское одиночное, или часть серии и т. д. [4, 102–103].

Считается, что неплохим вспомогательным средством для интерпретации является эмпатия — представление себя автором снимка или объектом фотографирования [6, 5–7]. Ограничение здесь только одно — неполнота нашего социального и политического опыта, незнание всех закулисных аспектов политической практики. Дело в том, что опыт самого автора снимков, понимание им сути фотографируемых объектов может оказаться недостаточным для более полного представления фотографируемого события или политического лидера.

Так, семиотическая и структурная интерпретация может быть применима при анализе определенной ситуации по фотографии. Расшифровывая смыслы, коды, важно различать знаки-иконы, знаки-указатели и знаки символы. Например, значок в виде российского государственного флага обозначает принадлежность владельца к закрытой элитной группе, возможно обладающей существенными привилегиями. Если на фотографии запечатлен момент сжигания флага государства или небрежного с ним отношения, то этот снимок в качестве знака — указателя говорит о не просто неуважении к символу государства, но и об отрицательном отношении к политике государства, готовности к протестным действиям, которые подлежат уголовному преследованию.

Структурная интерпретация фотографий предполагает обнаружение социальной или политической сети отношений на последовательном выполнении нескольких поисковых шагов: а) системы интеракции; б) общественных правил (норм, определяющих желаемое поведение, ценностей, регламентирующих желаемую цель действий, жизненных образцов, неразрывно связанных со стилем жизни, нравов, этических норм, законов); в) идей; г) жизненных возможностей (видимые знаки благополучия).

Отметим, что стереотипы в одежде весьма примечательны на фотоснимках — когда очень похожие или почти одинаковые черные, темно-синие или цвета хаки брючные костюмы на китаянках чаще всего появляются на фотографиях 1970–1980-х гг.

Интересны для анализа фотографии первой леди США Мишель Обамы, на которых запечатлено как женщина ухаживает вместе со школьниками за садовыми деревьями и выращивает зелень на лужайке перед Белым домом. Понятно, что выращенные растения отнюдь не сэкономят финансовые средства налогоплательщиков по содержанию президентской четы, однако символически они очень доходчиво доносят идею демократичности президента, его близости с американским народом.

Свидетельством жизненных возможностей может быть изображение политика, играющего в гольф, или наличие в эскорте автомобилей сопровождения реанимобиля, что действительно говорит о значимости перевозимого лица. В повседневной жизни часто наблюдаются тонкие признаки статуса и власти, преимущественно невербальные, но хорошо заметные на снимках: поворот головы или корпуса тела по отношению к собеседнику, мимика и т. п. [2, 277].

Очевидное качество одежды политика, цвет, длина галстука и даже размер узла, марка часов четко свидетельствуют о статусе персоны. Но подчас о власти может свидетельствовать и нарочито небрежный псевдодемократический стиль в одежде, поскольку она в данном случае служит не средством достижения престижа, а признаком того, что он уже достигнут.

Дискурсивная интерпретация подразумевает связь с той категорией получателей информации, которые в некотором роде уже определены. Также, дискурсивная интерпретация помогает ответить на вопрос о том, каким образом будет воспринят снимок самыми разными представителями аудиторий — исходя из половозрастных показателей, уровня образования, особенностей субкультуры, политических взглядов, национальной, конфессиональной и профессиональной, классовой принадлежности. Нельзя забывать и о том, что при интерпретации обязательно должно учитываться место размещения снимка. Так, например, снимок, размещенный в иллюстрированном журнале, совершенно иначе будет «прочитан» по сравнению с тем же снимком, появившемся на официальном канале ТВ или в информационной колонке экстренных новостей Интернета и т. д. Таким образом, контент фотоматериала во многом определяется культурными моделями восприятия, обнаружения значимых и важных явлений действительности и её нюансов. Содержание фотопубликаций почти всегда акцентировано в зависимости от того, какие культурные смыслы и нормы «работают» при её создании. В одних случаях культура накладывает свои ограничения на способ изображения субъектов власти, в других — в целом на возможность репрезентации тех или иных фрагментов действительности. Степень различий в прочтении фотоснимка будет зависеть от культурных различий авторов и аудиторий изданий.

Список литературы:

1. Аджимаз О., Кожемякин Е. Культурные модели визуальной репрезентации власти в дискурсе фотожурналистики//Современный дискурс-анализ. Выпуск 4. URL: http://discourseanalysis.org/ada4/st34.shtml (дата обращения: 24.02.2016).
2. Бергер А. А. Видеть – значит верить. Введение в зрительную коммуникацию. 2-е изд. М.: Издательский дом «Вильямс», 2005. – 288 с.

3. Попова О. В. «Измерительный инструмент» в сравнительной политологии: к вопросу о нерешенных проблемах//Политическая экспертиза: ПОЛИТЭКС. 2009. Т. 5. № 1. С. 271–291.
4. Попова О. В. Фотография как объект политологического анализа (статья)//Вестник СПбГУ. Серия 6. 2010. № 1. С.101–112.
5. Сазантович А. Б. Политическая фотография и фотография политики: содержательный аспект//Человек. Сообщество. Управление. 2012.№ 1.С. 160–165.
6. Щербинина Н. Г. Визуальный феномен в политической репрезентации//Вестник Томского государственного университета. Философия. Социология. Политология. № 3 (19).2012. С. 5–13.
7. Флюссер В. За философию фотографии. СПб.: Изд-во С.- Петерб. ун-та, 2008. URL: http://monoskop. org/images/8/8c/flusser_ vilem_ za_ filosofiyu _ fotografii. pdf (дата обращения: 24.02.2016).

Section 9. Political problems of the international relations, global and regional development

Kasumov Ruslan Tofikovich,
the 1st year Master student of IAAS MSU.
E-mail: kasumovrk@mail.ru

Modern terrorism as a product of globalization

Abstract: In this article, the affirmation of terrorism in a new form is associated with global processes. The author perceives this not only in technical equipment, organization and scale of modern terrorism. To a greater extent update of the terrorism is seen in its political aspiration expressed in the claim to statehood. The author argues this position based both on the essential principles of terrorism and post-modern trends of the world politics.

Keywords: terrorism, globalization, traditional terrorism, global terrorism.

"In today's world, when a nuclear bomb made the use of military force obsolete, terrorism should become our main weapon".
A. M. Sakharovsky

Rooted in the mists of time, at the turn of the XX and XXI centuries terrorism influenced by globalization processes has acquired new shapes and meanings essentially changing the entire world order. This concept has become an integral part of contemporary political discourse. Now the word "terrorism" increasingly appears in the mouth of politicians, it is associated with any violent action of hostile parties, whether the acts committed by a lone maniac, an organized group or state. Broadcasted in the media as a "bargaining chip" in the international relations, the terrorism has become synonymous with the universal evil, but the very term "terrorism" is not defined, unless, of course, falling into truism. It is certain that terrorism is a generic term, on the basis of which we must distinguish its kinds, especially traditional terrorism incorporating ethnic and religious terrorism, and modern, global terrorism, which produces horror as a transnational event and has become the main tool of geopolitical confrontation in the XXI century.

Presenting terrorism from its origins to the present day as a special way of violent behavior, we will distinguish three main phases of existence. In the first, initial phase, terrorism appears as a *sporadic phenomenon* in centuries, when the essential moments are hostile aggression and demonstration of small force possibilities against a large force. In its second phase, terrorism rather serves as a means of achieving political goals being closely intertwined with nationalistic aspirations, and its essential bases are enriched by various ideologemes. Finally, the third phase, which we can mention as a stage of large-scale terrorism institutionalization, is its functionally determined form when its essential features are amplified by globalization.

Regarding this, the problem of the "terrorism" concept interpretation gets additional arguments. And this is despite the statement of the fact that there was no single approach to defining the essence of this phenomenon, and that all attempts of the term meaningful interpretation are currently at an impasse. Some researchers totally refused to give any definition to this phenomenon because of its strong blur [1, 5].

This state of affairs has its own explanation, and above all due to the fact that terrorism is a collective and synthetic concept. It covers a wide range of

social and political life phenomena — from the actions of extremist religious and ethnic groups to any armed conflict, which does not fit into the framework of the traditional understanding of war. Jeffrey Simon notes that there are currently about 212 definitions of terrorism, about 90 of which are used by states and other international institutions [2, 29].

However, such an abundance of characteristics indicates only extended functional-semantic meaning of the term "terrorism" and that it covers various aspects of social and political life inside and outside the state without changing its essence.

Therefore, defining terrorism, we should not list all its features and characteristics by the principle of "all in one basket". In fact, we meet an approach, when specific characters of terrorism in their set prevail over its essence. When we almost omit the fact that the main feature of terrorism is violence with the aim of demonstrative fear spreading.

However, the purpose of this article is not to define and describe the foundations and origins of terrorism genesis, but to consider its modern transnational types and the role given to it in the current political realities and marked by the society itself.

It is no secret that the society of modernity already goes into oblivion in many spheres, and that postmodernism comes to its place, yet obscure and poorly studied, with its denial of human and rethinking of the fundamental concepts. In terms of postmodern trends and growing globalization, traditional terrorism is known as a violent way of achieving the goals with "small means" and clearly not on the battlefield gets a special political status and development. This is primarily due to the fact that terrorism itself has long gone beyond one country borders or even one sphere of influence. Its role has increased dramatically in international relations, and it became increasingly perceived as a transnational phenomenon. The reasons for this transformation can be found in the global processes of political and economic integration and unification united by a common concept of "globalization".

As known, the motive force for the globalization (as we are interested only in its political and economic aspects) was the appearance of the first multinational companies in Europe in the XVII century (1600 — East India Company, 1602 — Dutch East India Company), and as a consequence, the spread of European economic and financial models around the world. For the first time, the term "globalization" was used by Karl Marx in a letter to Engels in late 1850s: "*Now the world market actually exists. With the participation of California and Japan in the world market, the globalization is accomplished*" [3, 192].

Further, the process of globalization only increased its speed ultimately leading to the almost complete elimination of any economic, political and cultural barriers between countries and the creation of large economic and political integration areas. Reduction of state intervention in the economy and increase of political influence by large transnational corporations have led to a weakening of the national states and reduction of their sovereignty. The modern state has become a hostage of influential international organizations, increasingly delegating its powers to them.

This kind of anti-national and anti-state processes have led to the fact that traditional terrorism, which got a powerful impetus to development in the XX century due to the collapse of colonial empires and beginning of the world struggle for independence by colonized peoples of Asia, Africa and the Middle East, at the turn of the centuries goes out of the narrow national and government frameworks and becomes global. It is a mistake to believe that the modern terrorism is an antiglobalist phenomenon, a peculiar form of protest against the world order. The XXI century terrorism, used by the world's political and economic elite as a means of pressure on the domestic politics of sovereign states, is becoming one of the main "locomotives" for the world globalization, its indispensable component. The problem is in the fact that the terrorism as a transnational space continues expansion having the "power — society" relations sphere as a priority target.

The terrorism, as a phenomenon of global importance and an effective factor in the political life, includes both the very action — terror and the perpetrators of these actions — terrorists infected with nationalist and extremist ideas. The unity of these components (the terror, the subject/object of the terror and the ideologem) and the interest of some forces to use terrorism as an instrument (tool) for

their own benefit now determine the essence of the globalist terrorism as an institutional formation designed primarily to produce total fear.

The development of computer technologies and, above all, the Internet, which made the entire world to be a target of terror, plays a significant role in the globalization of terrorism. From now on, messages of fear and terror can reach absolutely anyone, and this fact testifies to the global nature of terrorism and its increasing role as a factor of political life, which assesses the effectiveness and legitimacy of the government and international coalitions.

The basic principle of terrorism, by which it has successfully adapted to the globalist world, is the principle of "economy". This principle of "economy" should be seen as a feature of globalization that unites politics with the economy. The main credo of large multinationals — "minimum costs and maximum income", which became the basis of economic globalization, is now perceived as an effective means to achieve political goals. According to this standard, customary political achievements set the tone of international relations. Terrorism thus replaces the "great war" as an economical means, because today the terrorism is acceptable at the level of interstate relations, and most importantly, it is cost-effective means to achieve geopolitical goals making the very nature of international relations more unofficial and controversial.

Modern terrorism keeps pace with the time developing both in scope drawing more and more young people into its ranks and in depth continuing to improve organizationally and technologically. However, even with this, the lumen is still planned in the distance, as evidenced by political orientation to the fact that the terrorism can be eradicated. This can be achieved only through the application, in accordance with the UN Charter and international law, of sustainable comprehensive approach that includes active cooperation of all states, international and regional organizations, and by redoubled efforts at the national level. In short, global terrorism should be fought in a global scale, but what prevents the implementation of such an approach?

References:

1. Laqueur W. Terrorism. London: Weidenfeld and Nicolson, 1977.
2. Jeffrey D. Simon. The Terrorist Trap. Bloomington: Indiana University Press, 1994.
3. Attali J. Karl Marx or the thought of the world. Moscow, 2008.
4. Terrorism as a social and political phenomenon. Countering today. Moscow, 2015.

Section 10. Family law

Alikaj Valbona,
"Ismail Qemali" University, Vlorë
PhD Candidate Private Law, Faculty of Law,
University of Tirana,
E-mail: bonaaliko@gmail.com

The effects of the end of marriage by natural death and by declaration of death

Abstract: The family is the source of the gift of love to each individual. The family is the considered as the main source of life to every person, society and state. The family relations are regulated based on the principles of free will of the man and the woman, of equality of spouses in the family, by mutual agreement in solving internal family, the priority of family education of children, by ensuring a better future to the children.

The evolution of the family concept from the old Roman Law to the now days concept of the foreign legislations is main topic of the first part of the paper.

The aim of this paper is the treatment of the effects of the end of marriage by natural death compared to the effects caused by the declaration of death. The paper brings a comparison of the effects on the end of marriage by the declaration of death of one of the spouses.

This paper aims to give an answer to the following questions;

Will marriage still exist in case one of the spouses will be declared dead?

which will be the effects on the marriage and on the other spouse if one of the spouses is declared dead? What happens if the declared reappears?

Keywords: marriage, end of marriage, effects, declaration of death, surviving spouse.

Marriage is the only form of slavery permitted by law.
John Stuart Mill

The marriage institution is been regulated for centuries by the norms of Roman law. In Roman digesta matrimonium or marriage was considered as a relationship between a man and a woman, a lifelong partnership that includes the divine and human law [1].

Matrimonium derived partly from the word mater- mother. The Romans saw marriage as an institution that legitimate the child reproduction. The marriage was not a Sacrament (a medieval ecclesiastical concept), but simply a social fact with some certain legal consequences [2, 174]. Marriage was seen as an important event in human life not only in terms of his private life, but also a kind of public duty [3]. Marriage in Roman law fulfill several functions; as economic function, the woman was part of a new family, the wife ends her relations with her family of origin and enters on husband's manus or paterfamilias where her husband lived. One of the obligations that arise for the married women was bringing with her some of her property form the family of origin (dos).This property would serve to provide a better coexistence of the family.

The social function, which consisted not only in the relationship between spouses but also affinity relations created by marriage. Also, a very important function is the biological one, which consist in the purpose of reproduction. Marriage is an evolving and dynamic institution. This means that social

changes in different systems and in different time strongly reflected in this institute. Consequently the meaning of the marriage by the Roman law and the consequences between spouses social have changed by the social evolution although the importance of this institute has not faded with time, but continue to be protected in a particular way.

Marriage as a legal cohabitation is based on the principal of moral and legal equality of spouses, the feeling of love, respect and mutual understanding as the basis of unity of the family. Marriage and family enjoys special protection by law [4, art.1].

Marriage is an institution that creates a juridical relationship, creating so a community in which husband and wife should respect and help each other and act in the best interest of the family. Spouses must be faithful and should provide mutual assistance. Man and woman in marriage have the same rights and obligations [5, art.1].

According to Russian legislation the concept of family is given in a narrow way; "A marriage shall be entered into at registry offices". "The rights and duties of spouses shall arise as from the date of official registration of their entering into a marriage at registry offices", differently from that given in the Albanian and Spanish legislation.

The Italian legislation provides the concept of "marriage" in two meanings; as an act and as a relationship: the first is the manifested will of two people of different sexes, in the characteristic form of celebration of the marriage, stating the desire "to receive respectively as husband and wife one another [6, art.107], by creating a legitimate family. The second is the legal relationship that the act establishes between spouses, which lasts until the death of one of them, unless it ends with the dissolution of marriage [6, art.149].

The bond of marriage requires commitment by both of the spouses to respect and fulfill certain essential conditions and to avoid those elements that legislatures recognize as impediment of marriage. Some of these are important conditions for the validity of their marriage and their absence causes nullity of the marriage.

Some of the essential conditions of marriage are:

1. Age of marriage is a substantial condition to fulfill by both of the spouses. The Family Code provides the same age of marriage for man and woman, both spouses should be over 18 years old. The age of eighteen is the age of acquiring full legal capacity. As long as the marriage is being considered as a significant action and responsibility, which requires physical and intellectual maturity the spouses should have full legal capacity.

The age of marriage in The Family Code is defined by the reference made to the Civil Code provisions on the legal capacity and to many others national and international which consider this age as the border between a child and an adult. In terms of age it should be understood that the Family Code does not specify any maximum age for marriage or the age difference between spouses. The ability to act of the future spouses is an important condition in order to help them understand and appreciate the importance of this institution and the consequences that arise from it.

The evaluation of the importance of this institute is obvious even in the conditions that are to be met by the willingness expressed by the spouses. Free consent to marriage (Article 8), is a condition for entering into marriage. Lack of freedom of consent for marriage in situations of mistake, duress, misrepresentation or fraud causes nullity of marriage because of an absent of pure expressed will.

According to Roman law, a person could not be legally married with two different persons at the same time. The Romans saw marriage as a monogamy relationship. Persons who bound a second marriage became the target of social embarrassment (Infame) [2, 178].

With the dissolution of the first marriage, each spouse may enter into a new marriage relationship. Roman law provided for a period of "mourning" of 10 months, within which one of the spouses could not get a legal marriage. The principle of monogamy is forwarded and saved in the current legislation.

The Albanian legislation provides the invalidity of the new marriage, in cases when one or both spouses are still in an existing marriage, therefore not dissolved or declared invalid. In case of not respecting the principle of monogamy the marriage should be declared null. The marriage will not be declared null if the previous marriage;

Is declared invalid

Has been dissolved and there is a decision on its dissolution

Has ended because of the death of one of the spouses or due to the declaration of death.

The situation changes when one of the spouses is declared missed. The declaration of missing of the person is not legally equated with the natural death which means that marriage is not considered terminated. If the person is declared dead, it equates to natural death and the first marriage is considered ended first and second one valid.

When a person who is declared missed suddenly returns and the other spouse is in a second marriage, the second marriage should be valid after the dissolution of the first.

The Italian legislation differs from the Albanian legislation, since it respects the system of monogamy (Article 86 of the Civil Code), under Article 65, authorizing the surviving spouse to conclude a new marriage, so the marriage of the person declared dead will be considered ended. For sure it could not be said that the law allows the creation of a second valid marriage, next to the one between that of the declared dead person and his surviving spouse. In this case the existence of two marriages, both valid will be in conflict with the principle of monogamy [6, 69].

The end of marriage was particular regulated by the Portugal legislation, which in Article 115 of the Civil Code provides that by declaring the person dead came the same effects as the natural death, but it does not bring the end of marriage, without prejudice to the following article (Article 116). This article allows the spouse of declared dead to bond a new marriage and if in case the person reappears (or if there are facts that shows that the person has been alive meanwhile a new marriage is registered), the first marriage will be dissolved (divorce) on the date of the announcement of the declaration of death.

The effects of the end of marriage by natural death vs declaration of death.

Death of one of the spouses is one of the leading cases on termination of marriage. In this case it is not necessary for the surviving spouse to ask for a request for the dissolution of marriage to the court. The natural death brings to the end all the physiological functions of the body and consequently the dead is not any more subject of the law. Actually as a legal category of natural events death of one the spouses causes the termination of the marriage.

In some countries, the declaration of a person dead automatically brings to the termination of the marriage (ex, Albania, Spain, Italy, UK). In other states the declaration of death does not result in an immediate termination of marriage but occurs as a result of entering into a new marriage relationship of the surviving spouse (Germany "marriage of the person declared dead will end only with the new marriage of the surviving spouse " [7, art. 1348], Argentina, Portugal).

In the third and the final group of the states, the declaration of the death, does not lead to the end of the marriage. The surviving spouse could not enter automatically into a new marriage (in the third paragraph of Article 195 of the previous Civil Code of Spain [8] and all the legislation that follow the canon law).

According to De Castro and Bravo [9, 551–552], (paragraph 2, Article 195) does not allow the surviving spouse to enter into a new marriage.

This authors interpret the norm in a different view confirming that there is no legal modification of the situation. The marriage ended with the death of the spouse (Article 52), and not because of declaring the person dead". They defend the idea that "declaring (is an uncertain presumption) and as such does not authorize the right to enter in a new marriage of the surviving spouse. According to the authors the article "clarifies that the civilian norm (as the norm of declaration of death is not enough for the surviving spouse to enter into a new marriage), there is no obstacle to apply the provisions made by the canon law.

The same opinion is found even in Serrano & Serrano, confirming that the same effects of the natural death can't be attributed to the declaring the person dead "because the end of the marriage would bring immediate effect in case of natural death, which will make a final situation on the destiny of the marriage " [10, 400–404].

In this case there is no end of the marriage by declaring a person dead, but simply is marriage lethargy. The marriage stays immoveable which means

not consumed. With the appearance of the person declared dead this transitory period disappear and the marriage get back in the previous situation.

The civil law provides the same effects as to the natural death and to the declaration of the person dead by a court decision. In this case we don't have to do with a clear legal fact of a natural event. The court decision brings the termination of marriage even though there is not a confirmed event and a natural death.

So the legislator provides the same effects to the marriage ended by natural death with the end of marriage by declaring the person dead. Declaring a person dead can bring the end of the marriage, the date of death should be determined by the court, and the decision must be published in the Official Journal and should be send to the relevant office of civil registration. Death declared by court equal in all effects with the natural death [11, art. 22].

Although marriage ends with death, some consequences are verified, which have their source precisely in the marriage and which have personal or property character. The effect arising from the termination of the marriage as a result of death (natural or civil) of one spouse are:

The surviving spouse may enter into a new marriage. This free status derives from the widow/widower status of the surviving spouse, which shows that the person was married and the marriage ended with the death of the other spouse. Some marital impediments still stay for the surviving spouse which comes precisely from the marriage ended by death. These impediments of marriage are linked with the affinitive relations between parents-in-law and the bride as well as mother in law and groom [4, art.11].

The legal community and every other property regime established between spouses ends. Consequently begins the process of property division if a legal community applies [4, art.96].

The surviving spouse is entitled to inherit the dead spouse depending on the type of heritage (legally or testamentary), except in the case when the surviving spouse is declared unworthy and his unworthiness is not forgiven, or it has resigned from the inheritance, or is excluded, or is not included in the will at all.

The surviving spouse has the right to keep the surname that has taken from marriage. The right of keeping the surname is not an obligation, therefore it does not affect the right of the surviving spouse to change surname. It is in the will of the surviving spouse to change or not her/his marriage surname. Such provision does not take place in cases of divorce.

In case the husband's death is caused by an illegal action of the third person [12], the surviving spouse has the right to demand the compensation of losses property that have come from the reduction of household income, as well the other non-property damages for spiritual health suffering, violating the values and quality of personal and family life, recompense for funeral expenses, for health insurance and the costs of judicial protection.

The right to family pension. Persons who are in charge to the dying person, who met the conditions for the benefit of one of the types of pensions or received pensions have the right to receive family pension. The surviving spouse loses the right to family pension if he/she gets married.

The right of the surviving spouse to benefit from other additional payments. This payment shall be granted: a) the insured person or pensioner in case of death of a family member that he is in charge, b) the person who took care of the insured dead person who paid the funeral expenses.

In difference to the end of marriage by natural death of one of the spouses, where the effects are definitive, in the termination of the marriage as a result of declaring the person dead the consequences as also the situation are uncertain. This means that as long as the death of the person is presumed, always exists the possibility of reappearance.

The Albanian legislation, as well as the other legislations that are taken under consideration in this paper, provides the return of all the rights of the person declared dead before declaring him as such in cases of his reappearance. The reappeared person is still considered married to his/her surviving spouse, but with some limitations. If the surviving spouse has entered in a new marriage during this time, the previous marriage shall be considered ended.

The Russian legislation does not accept the idea of restoring automatically the previous marriage of the person declared dead, but asks for a common consent of both spouses made in front of the registry

office in a joint application, in order to give effects to the previous marriage [13, art. 26].

Restoring the marriage means that the legal consequences are not interrupted even during the spouse absence. Earned assets during the absence of the spouse shall be considered as common property, except in case when it is provided differently in a marriage contract. In the case when the surviving spouse has concluded a new marriage, the Russian legislation makes the same provision like the other legislations, considering the first marriage ended.

Conclusions

This paper aims to treat the marriage institute and it's termination by comparing the provisions of different legislations. Special attention is paid to the effects of the termination of the marriage by natural death and by the declaration of a person dead.. The natural death is based on certain facts. The declaration of a person dead is based on uncertainty and presumptions.

Despite the differences of different provisions, the effects deriving from the natural death of one of the spouses are the more or less the same as the effects arising from the declaration of a person dead. Although not all the legislations provide the automatically end of the marriage in cases of declaration of death.

Some of them provide the termination of the marriage only if the surviving spouse get involved in a new marriage relationship otherwise the surviving spouse will continue to be in the previous marriage relationship. In my opinion these provisions try to protect the personal and property interests of the person declared dead. On the other hand such a provision probably could bring to a restriction of the personal rights of the surviving spouse.

The declaration of death has a revoking character, as if the person reappears he/she gain all the rights that he/she enjoyed before the declaration of death. He gain back even his/her marriage. Some of the legislations provide this right with some restrictions.

The Albanian legislation provides that if the surviving spouse has concluded a new marriage during the time of her/his spouse absence, the previous marriage shall be terminated. But there are some legislations which have a narrow view in providing such right as is the case of the Russian legislation. The provisions of the Russian legislation do not accept the idea of returning automatically to the previous marriage of the person declared dead, but require the mutual consent for the continuation of the marriage by both spouses before the civil authorities.

References:

1. Modesitinus, Rules, Book 1 (D 23.2.1).
2. AndrewBorkowski & Paul Du Plessis, E drejta romake (e përkthyer) Tiranë 2010, pg.174.
3. In the legislation of August favored the marriage, such law " Papia Poppae" sanctioned the obligation of marriage for men from 25–60 years and women 20–50 years old.
4. Family Code of Albania.
5. Código de Familia de Espana, Ley 9/1998, de 15 de julio.
6. Italian Civil Code.
7. Borkowski A. & Paul Du Plessis, E drejta romak (e përkthyer) Tiranë 2010, pg. 178.
8. Giorgiani Michele. La dichiarazione di morte presunta, Milano, pg. 69.
9. II B. G.B, German Civil code, Book 4, Art. 1348.
10. Ley de 8 de septembre de 1939, Civil Code of Spain which provided "The declaration of death wasn't enough reason for the surviving spouse to conclude a new marriage".
11. De Castro y Bravo. F. Derecho civil de Espana, t. II. Instituto de estudios politicos, Madrid 1952, pg. 551, 552.
12. Serrano y Serrano, I., La ausencia en el derecho espanol, ed. Revista de derecho privado, Madrid, 1943, pg. 400–404.
13. Civil Code of Albania.
14. Unified decision of United Colleges of the Supreme Court Nr. 12, dt.14.09.2007.
15. Family Code of Russian Federation.

Section 11. Criminal law and criminology

Hohrin Sergey Aleksandrovich,
Ryazan Academy of the Federal Penal Service,
Candidate of Law, Associate Professor
of Academy FSIN of Russia, Head of the department of organization
and supervision regime in prisons
E-mail: hohrinsa@mail.ru

Latency as factor of penitentiary crime

Abstract: This article is devoted to questions of latency of the criminal and legal characteristic of the crimes committed condemned in correctional facilities. In this article is considered the reasons of concealment of the crimes committed condemned in establishments of criminal and executive system of formation, certain reasons and conditions for concealment.

Keywords: penitentiary crime, condemned, criminally correctional facilities, justice.

Хохрин Сергей Александрович,
кандидат юридических наук, доцент
Академия ФСИН России, начальник кафедры
организации режима и надзора в УИС,
E-mail: hohrinsa@mail.ru

Латентность как фактор пенитенциарной преступности

Аннотация: Данная статья посвящена вопросам латентности уголовно-правовой характеристики преступлений совершаемых осужденными в исправительных учреждениях. В данной статье рассматривается причины сокрытия преступлений совершаемых осужденными в учреждениях уголовно-исполнительной системы формирования, определенных причин и условий для сокрытия.

Ключевые слова: пенитенциарная преступность, осужденный, уголовно исправительные учреждения, правосудие.

Определение стратегии борьбы с пенитенциарной преступностью является одним из элементов нормального функционирования объектов уголовно-исполнительной системы (далее УИС). В своих работах А. Э. Жалинский, указывал «… социально-правовые решения в сфере борьбы с преступностью, связаны с уголовным законом и являются средством его реализации» [1, 153]. Исследование так или иначе затрагивающие способы нейтрализации преступлений совершаемых осужденными в местах лишения свободы предполагают изучение их показателей и структуры. Полученные данные позволят обосновать выработку определенных условий предупреждения преступлений в местах лишения свободы [2, 13].

Отмечается рост уровня преступности в целом по системе на 41,6% в первую очередь за счет ИК, где увеличение составило 45,7%. При этом уровень особо учитываемых преступлений по системе возрос на 56,8%. Количество побегов увеличилось на 64,2%, в т. ч. из-под охраны на 25%.

Особенности изучения структуры и динамики преступлений осужденных в исправительных учреждениях целесообразнее начинать с выра-

ботки основных задач, в рамках которых проще начинать изучение. Поэтому анализ судебной практики и статистических данных позволил сформулировать:

- первое мы должны разгруппировать совершенные преступления по однородным признакам;
- второе разделить определенные группы осужденных, которые виктимологически склонны стать жертвами данных преступлений.

В рамках изучения данных вопросов, автором было проанализировано более 1400 уголовных дел, по фактам совершения преступлений, как сотрудниками, так и осужденными, а также все статистические показатели характеризующие последние 10 лет.

Обобщая полученные данные мы можем с уверенностью сказать, что указанное категорирование специфических тюремных преступлений, отличаются высоким уровнем латентности.

Латентность указанных преступлений подтвердили и сотрудники исправительных учреждений. Так при проведении опроса по программе исследований, на вопросе как вы считаете, имеются ли факты сокрытия преступлений совершаемых осужденными в исправительных учреждениях. На предложенные варианты отвечали начальники и заместители начальников исправительных учреждений:

В моей практике такое случалось-43,7% опрошенных респондентов.

Такого не может быть 22,7% опрошенных респондентов.

В моей практике такого не было-17,16% опрошенных респондентов.

Затрудняюсь ответить 8,93% опрошенных респондентов.

При проведении опроса интересен факт, что 11,3% просо отказались отвечать на поставленный вопрос. Положительное количество ответов, могло быть по нашему мнению гораздо больше. При проведении опроса ряд сотрудников побоялись негативной оценки их работы. Именно боязнь испортить отчетность вынуждает представителей администрации к сокрытию от учета преступления, которые непосредственно совершаются в учреждениях и по своей сути посягают на нормальную работу исправительных учреждений. Все это проявляется в большей степени, за счет принятия решений об отказе в возбуждении уголовного дела по выявленным фактам.

В целом, большинство сотрудников (49,67%) оценивают прогноз на развитие пенитенциарной преступности как, будет рост, 31,61% останется на прежнем уровне преступности в исправительных учреждениях и 10,96% считают, что произойдет снижение.

Не секрет, что каждый шестой осужденный, в исправительных учреждениях отбывает наказание за совершение убийства, каждый третий за грабеж, разбойное нападение и бандитизм. Каждый пятый болен алкоголизмом и наркоманией, из них 65% с различными психическими расстройствами, криминализация спецконтингента привела к росту преступлений против личности.

Так на вопрос, какой фактор, по вашему мнению, наиболее чаше встречается при совершении преступлений посягающих на жизнь и здоровье, как осужденных, так и сотрудников и дезорганизацию деятельности учреждений, обеспечивающих изоляцию от общества:

1. Традиции, обычаи и нравы преступного мира – 44,83%
2. Низкая занятость осужденных – 20,96%
3. Психическая неуравновешенность осуждённых – 31,96%
4. Слабое решение коммунально-бытовых проблем осужденных – 7,09%
5. Неумение осужденных выходить из конфликтных ситуаций – 15,48%
6. Наличие мертвых зон в системе видеонаблюдения за осужденными – 5,16
7. Слабая компетентность сотрудников – 17.41%
8. Низкое состояние воспитательной работы с осужденными – 13,22%
9. Непринятие мер воздействия к нарушителям режима – 21,29%
10. Мягкие меры наказания к нарушителям режима – 25,16%
11. Не сталкивался – 2,9%

Как видно из анализа мнений традиции, обычаи и нравы преступного мира являются одним из основных факторов совершения преступлений

посягающих на жизнь и здоровье, как осужденных, так и сотрудников и дезорганизацию деятельности учреждений, обеспечивающих изоляцию от общества.

Подводя итоги, мы можем сделать следующий вывод:

Мы отмечаем, что при проведении опроса ряд сотрудников говорит о возможности сокрытия преступлений совершаемых осужденными. Одной из причин сокрытия, является боязнь испортить отчетность, что вынуждает представителей администрации к сокрытию от учета преступления, которые непосредственно совершаются в учреждениях и по своей сути посягают на нормальную работу исправительных учреждений. Все это проявляется в большей степени, за счет принятия решений об отказе в возбуждении уголовного дела по выявленным фактам. В целом, большинство сотрудников оценивают прогноз на развитие и увеличение пенитенциарной преступности в исправительных учреждениях.

Список литературы:

1. Жалинский А. Э. Социально–правовое мышление: проблемы борьбы с преступностью. М., 1989. 312 с.
2. Слободянюк Г. Г. Социально-правовые вопросы борьбы с побегами из лесных исправительно-трудовых учреждений. Домодедово, 1988. 97 с.

Section 12. Environmental law

Mecaj Stela,
University "Ismail Qemali" Vlora
PhD Candidate in Environmental Law, the Faculty of Law
E-mail: stela.mecaj@yahoo.com

Albanian environmental legislation approach in the framework of the Stabilisation and Association Agreement

Abstact: The Republic of Albania is committed to respect the general principles of democracy and fundamental human rights of the Universal Declaration of Human Rights, the European Convention on Human Rights, and itself commits to promote cooperation and good neighbourhood relations with countries of the region, through signing a number of bilateral and multilateral agreements. In the framework of interaction and intensification of relations with the European Union, in view of democratization and transformation of the Albanian society, in accordance with European values and principles, it signed a Stabilisation and Association Agreement which clearly determined purposes and priorities that will be kept in mind by the Albanian state on its path towards the European Union. This paper aims to present the approach of the Albanian environmental legislation with EU environmental law framework to identify to what extent this legislation is approximate. The results achieved are that Albania still needs to do more in the process of harmonization of legislation with European legislation and its implementation. Overall, preparations in the field of environment are at an early stage, highlighting the shortcomings of administrative capacity and funds.

Keywords: Stabilisation and Association Agreement, harmonization, environment, horizontal legislation, waste management, chemicals, air quality, climate change etc.

Introduction

Stabilisation and Association Agreements of the European Union with third countries constitute the basis of the beginning of a process of political dialogue, the establishment of common institutions [11, p. 10] and also form the basis of close relations between the European Community and the associated country. The Stabilisation and Association process was defined as the main contribution of the European Union's Stability Pact, based on the conviction that the prospect of accession of the countries of the region into the European Union is an incentive to achieve stability and undertaking reforms [12]. Albania is part of the Stabilisation and Association Process announced for the five Eastern European countries at the Zagreb Summit in 2000.

The Albanian government is aware that any new step along the membership brings new responsibilities and requires work increasingly larger and aims to intensify the reform of European integration, while maintaining a focus on meeting the priorities identified in the Enlargement Strategy of the European Commission October 2014 [2, p. 14]. To become EU members, Albania must meet the criteria established in the Copenhagen European Council in June 1993. These criteria require, guaranteeing democracy, the rule of law, respect for rights human and minority rights; establishment of a market economy that can withstand competitive pressure and forces of european common market; candidate state must be able to respond to the obligations arising from the "acquis communautaire" or the legislation of the European Union. [1].

The historical overview of relations between Albania and the European Union

Diplomatic relations with the European Union (EU) were set in 1991. The most important event in the relations between Albania and the EU was recorded a year later, on May 1992, with the signing of the Trade and Cooperation Agreement which entered into force on December 1992. At that time, Albania is included in the General System of Preferences (GSP), which represented a comprehensive regime of trade preferences that the EU was offering a wide number of countries with which it had contractual relationship. Trade and Cooperation Agreement of May 1992, allowed Albania to benefit from the PHARE program funds. This constitutes an important step towards the restructuring of the EU's assistance to Albania in a number of areas that coincide with the reforms which the country was involved. Under this program, in the period 1992–2000, Albania has provided considerable assistance.

In 1996, Albania was close to signing a new contractual agreement with the EU, which will pave the way for a classic association agreement. But the contested parliamentary elections of May 1996, together with the deep financial and social crisis that followed in early 1997 contributed in the failure of any initiative in this direction. Political developments during this period in the different countries of our region, the breakup of the former Yugoslavia, created a number of new states, the parameters of which differed from those of Central Europe, so in 1996 the European Union adapted to Balkan countries the so called policy "Regional approach". General Affairs Council, at this time, define a set of political and economic conditions that the Balkan countries had to meet to develop and strengthen their relations with the EU. These criteria were related to democratic principles, freedoms and human rights, building respect and strengthen the rule of law, protection of minorities, the development of market economy, as well as regional cooperation. Although oriented to help strengthen democracy and reforms in the countries concerned, this policy of the EU tried to give the expected results. Because of recent developments regional, the tragic events in Kosovo "traumatized" system of international relations and increased their pressure to find forms and other ways to speed up the "integration" of South-East Europe in the structures of the EU [8].

In May 1999, the European Union adopted a new initiative for five Balkan countries: Albania, the former Yugoslav Republic of Macedonia, Croatia, Bosnia-Herzegovina and Federal Republic of Yugoslavia, called the Stabilisation and Association Process (SAP). This process aims to establish closer relations between the EU and the aforementioned countries, through the Stabilisation and Association Agreement (SAA). In November 1999, the European Commission presented a report on the feasibility study on the opening of negotiations with Albania for the signing of the Stabilisation and Association Agreement, reaching the conclusion that, however, Albania did not meet the conditions for such an agreement. In November 2000, it took place in Zagreb meeting of countries involved in the Stabilisation and Association Process. At this meeting, the EU decided to intensify cooperation with Albania through the creation of the High Level Group Albania-EU. The purpose of this group was to assess Albania's capacity to assume the obligations of a Stabilisation and Association Agreement with the EU. Finally, the Commission found that although much remains to be done in terms of meeting the obligations resulting from a Stabilisation and Association Agreement, the prospect of the opening of negotiations is the best way to maintain the pace of political and economic reforms in the country. For this purpose, the Commission concluded that it is time to proceed with a Stabilisation and Association Agreement with Albania [8].

In June 2001 the Council of Ministers of the EU adopted the report of the Commission and requested it to present a draft mandate to open negotiations with Albania before the end of 2001. In accordance with the Council's request, in the month of December 2001, the European Commission presented to the Council the draft of negotiating a Stabilisation and Association Agreement with Albania [11, 3–4]. General Affairs Council of the EU in its meeting on October 2002, decided to open negotiations with Albania. The Thessaloniki Summit held in June 2003 of the so-called Zagreb II confirms the EU accession prospects of the countries of the Western Balkans region and paves the way for the use of instruments

used in the new member states. In December 2003, the Albania Readmission Agreement was initialed. In May 2004, the European Union launched the TAIEX program for the harmonization of legislation for the countries involved in the Stabilisation and Association process. In December 2005, the European Council adopted a decision on the principles of a revised Partnership for Albania. In April 2005, in Luxembourg signed the Readmission Agreement Albania-EU [8].

In February 2006, in Tirana was initialed the Stabilisation and Association Agreement. On June 2006, in Luxembourg, the Council of General Affairs and External Relations, signed the Stabilization and Association Agreement and the Interim Agreement on Trade and Commercial Cooperation. In July 2006, it approved the National Plan for the implementation of the Stabilization and Association Agreement. In July 2006 the Council adopted a regulation to create a new instrument for Pre-Accession (IPA). IPA replaced the existing instruments (PHARE, SPA, SAPARD, CARDS) from 1 January 2007. The Stabilisation and Association Agreement between Albania and the European Communities and their Member States was ratified by 25 member states, in July 2008. It also signed an agreement to facilitate the issuance of visas between the European Union and Albania. The Stabilisation and Association Committee in Tirana held its first meeting on March 2010, while the Prime Minister of Albania, delivered in Brussels, answers to the Questionnaire of the European Commission, on April 2010. The Albanian government concluded the submission of answers to additional questions to the European Commission Questionnaire on June 2010. Interior Ministers of the Member States of the European Union Council of Justice and Home Affairs approved the lifting of the visa regime with Albania, on November 2010 [8].

Upon request by the Council, the Commission presented its Opinion on Albania's application in November 2010, which assessed that Albania still had to achieve a necessary degree of compliance with the membership criteria and in particular to meet the 12 key priorities identified in Opinion. In October 2012, the European Commission recommended that Albania be granted candidate status, provided the fulfillment of key measures in the areas of judicial reform and public administration and revision of the Rules of Parliament. The Commission once again recommended that Albania be granted candidate status in the Progress Report 2013 and identified five key priorities for the opening of accession negotiations. These priorities are: public administration reform; independence, efficiency and accountability of judicial institutions; fighting corruption; the fight against organized crime; protection of human rights (including non-discrimination policies, the Roma community, and the implementation of property rights) [8].

On November 2013 launched the High-Level Dialogue on priorities between Albania and the EU. High Level Dialogue served as a tool to structure the EU-Albania cooperation and to help Albania to maintain focus and consensus on EU integration. Taking this into account, in light of the obligations that must be met under the SAA, Albania has adopted a strategic approach which will adjust the obligations it has assumed under its capacity and national interest. The priorities set in the National Plan for European integration are determined based on a number of sources, including the Annual Work Plan of the Government, SAA, the European Partnership, Albania's progress assessments contained in the Annual Reports of the European Commission. Short term priorities in the National Plan for European Integration in five main priority areas are fully synchronized with the Guidelines on 5 key priorities adopted by the Albanian Government on May 2014 [8].

National Plan for European Integration is synchronized with the National Strategy for Development and Integration 2014–2020 to be adopted on December 2014. For this reason, the National Plan reflects the readiness of Albania to achieve its short and medium term priorities in the process of approximation with the EU by implementing concrete measures, with special emphasis on June 2014 report, confirmed the recommendation that the Council grant Albania candidate status. The European Council adopted in June 2014 decision of the General Affairs Council, who gave Albania the status of candidate country. Receiving EU candidate status and the start of negotiations for membership in the European Union will constitute the primacy of

political action. The correct implementation of the Stabilisation and Association Agreement (SAA), the fulfillment of the rest of the 12 priorities of the Action Plan are key elements for the quality and speed of the process of accession to the EU.

The assistance provided by the European Union to Albania

Albania has benefited from Phare and CARDS instruments of the European Union. Also, through the Instrument for Pre-accession Assistance (IPA) during the period from 2007 to 2013, Albania has benefited from IPA Component I — Transition Assistance and Institutional Strengthening and IPA Component II — Cross-border cooperation. Previous support include operations such as: technical assistance, equipment and investment to shape better policy development, supporting capacity of central and local institutions to implement legislation of the respective area and to monitor the level of pollution (air and water), also included a series of infrastructure projects for construction of plant collection and treatment of wastewater along the Adriatic coast in order to maintain the quality of sea water. Additional areas as nature conservation and climate change have also received the support of IPA. Overall, EU assistance during the period 2007–2013 is estimated at 126 million Euro [9, p. 23].

Priority needs include further development of governance capacity at central and local level to develop and implement policies. Also, is needed further alignment of policies and legislation for the environment and climate of the EU, and ensuring effective implementation. The need for investment in the water sub-sector are important, (nevojiten të paktën 2.4 miliard Euro në përputhje me direktivën e BE-së për trajtimin e ujërave të ndotura, si edhe çdo vit 52 milion Euro për shpenzimet operative), although there are limits to capacity management. Use of certain investments, especially in the water sector supported by IPA I, is not yet satisfactory. Albania is vulnerable to climate change, especially by flooding and soil erosion, at certain times. In general, measures are needed to evaluate the risk of climate change, as well as adaptation measures in these areas.

The expected results that will be achieved with the assistance of the EU are: further approximation of legislation and environmental policy and climate change legislation and the best practices of the EU and implementation effectively; improving the sustainability of investments through better coordination of stakeholders; ensuring sound financing for operating and maintenance costs; determination of mature investment projects in accordance with the existing master plans; improving the collection and treatment of wastewater; an investment master plan for waste management, especially recycling, and a list of mature projects for implementation are available; increasing the number of plants for waste management, especially recycling; functioning the only mechanism of selection to identify priority investments in water, flood protection, waste management and climate change are considered the combination of grants IPA II with IFN loans; develop and implement of strategies and action plans for risk assessment and adaptation to climate change at local, regional and national levels [9, p. 24].

Development and implementation of environmental policies and action on climate, as well as alignment of the regulatory framework with the EU legislation will be supported through technical assistance, provided through twinning, service contracts, TAIEX and international agencies specialized. Preparation of projects mature and viable infrastructure investment will be supported through technical assistance for feasibility, evaluation, impact assessment, projections and other studies. It provided that all donor funds and other financing of the EU to be involved in a single process of prioritization and selection. IPA II [13, p. 11] will be invested mainly feasibility studies, impact assessments or design studies in order to prepare profitable investments. Instrument for Pre-Accession Assistance (IPA II) is the main financial instrument through which the EU supports the implementation of reform beneficiaries with the aim of EU membership.

To support the various ministries in the first half IPA II (2014–2020) [9, p. 4] will focus on the development of basic elements of a sectoral approach as the development of a plan for implementing the strategy, budget planning, institutional and organizational development, and Coordination among others. Under the IPA II, Albania will benefit from EU assistance for 2014–2020, an indicative of 640 million euros.

Albania participates in these EU programs: Seventh Framework Programme (FP7); Framework Programme for Entrepreneurship and Innovation; Lifelong Learning; Europe for Citizens; Culture and Customs. Currently, Albania has finalized or is in the process of finalizing new agreements for some programs, including Horizon 2020; Competitiveness of Small and Medium Enterprises; Fiscalis 2020; Erasmus +; Creative Europe; Employment and Social Innovation. Albania has applied for observer status in the EU Agency for Fundamental Rights. Albania will participate in cross-border cooperation programs with the Western Balkan countries and neighboring Member States, as well as transnational cooperation programs under the European Regional Development Fund.

The main achievements in environmental legislation [2, 14–17].

In the field of horizontal legislation has been progress in terms of transposition of the EIA Directive and the SEA, but there is no progress in terms of other directives. The transposition of the EIA Directive (2011/92/EU) has progressed excessively reaching 97%, while that is working to its full alignment. Also, significant progress was also noted in terms of transposition of the SEA Directive, reaching 95%. Most of the provisions of this Directive have been transposed by the adoption of Law no. 91/2013 on Strategic Environmental Assessment, in February 2013. This law, transposing Annex and most provisions, and provides the legal basis for the adoption of secondary legislation. The full transposition of the Directive on Access to Information and Public Participation that was achieved was in 2012.

In the area of further work in relation to the environment is necessary alignment of horizontal legislation, in particular the directives on environmental crime. A more effective system to prosecute and penalize environmental crimes should be applied. Environmental impact assessments are still not systematically before the start of infrastructure projects. Public access to information and consultation remains limited. Cooperation with civil society organizations should be strengthened. Lack of enforcement of environmental legislation is a major problem. Crosscutting environmental strategy has not been adopted yet. Public consultation, access to information and collaboration with civil society organizations is improved. First steps taken to strengthen law enforcement must be intensified. The process of environmental impact assessment has improved, but needs to be strengthened significantly in hydropower and mining industries in particular.

In the field of air quality, the division of responsibilities between the National Environment Agency (NEA) and the implementing bodies have been clarified. There are no plans at the local level to ensure the quality of ambient air and not taken any measures to combat violations recognized standard values. In terms of air quality, national strategy on air quality and the law on ambient air quality have been approved and should be implemented. Internal prohibition of smoking has proved effective. Albania has missed the deadline on its energy community for the implementation of the 1999 Directive on the sulfur content in fuel. Violations of the known values for air quality standards continue. Air quality in cities remains very problematic [2, 14–17].

Progress has been made in transposing the acquis in the field of waste management. Transposition of the Waste Framework Directive has reached the extent of about 95%. Marked progress in this area in the transposition of the Directive on waste water sludge. Specifically, progress has to do with the Council of Ministers Decision "Requirements for use in agriculture of sludge of wastewater", which is sent to the Council of Ministers for consideration and approval by the end of 2014. This Decision will transpose the greater the provisions of this Directive. Transposition of the Battery Directive has progressed due to the adoption of Decision no. 866, dated 04.12.2012 "On the batteries and accumulators and their waste". The level of transposition is high, reaching approximately 90%. However, national legislation has not yet transposed the remaining six provisions of this Directive. Transposition of the directive on packaging waste was completed in 2012, with the adoption of the Law on Integrated Waste Management, in September 2011, and Decision no. 177/2012 "On the packaging and their waste", in March 2012. The adoption of the Decision no. 705/2012 "On the management of end of life vehicles", in October 2012, has significantly improved transposition of the relevant directive. The level of

transposition has reached 83%. The level of transposition of the new WEEE Directive (2012/19/EU) is at an early stage and the transposition rate of 8% is the result of compliance with Directive 2002/96/EC, which is approximated by the Council of Ministers Decision No. 957, dated 19.12.2012 "On waste from electrical and electronic equipment." Transposition of the Landfill Directive that is in the range 98%. Only two provisions of the Directive (Article 2 and 14 (d)), remain to be transposed into national legislation.

Progress in transposition is achieved through the adoption of Decision "For landfill waste", in July 2012. Through the adoption of Decision 178/2012 "On the incineration of waste", the progress achieved in the transposition of Directive 2000/76/EC on the incineration of waste. Pursuant to the Law 10463/2011 "On the integrated waste management" is adopted Decision 765/2012 "On approval of rules for separate collection and treatment of used oils." Regarding waste management, the amendments made in October 2013 to the Law on Integrated Waste Management are not in line with the acquis. A national advisory body on waste arose in July. In October, a waste management committee was set up to plan and coordinate the implementation of policies in this area, but the capacity in waste management bodies remains very limited. Waste separation is almost non-existent and recycling rates are much lower. Most of the waste is still disposed of in an uncertain legal and illegal landfills, or incinerated. Waste management remains a serious cause for concern. Separation of waste is very limited and recycling remains rare. Most of the waste is still disposed of in an uncertain legal and illegal landfills, or incinerated. Medical hazardous waste are a major concern.

In the field of water quality, progress has been made in terms of transposition of the Water Framework Directive because of the adoption of the "Law for integrated water management", in November 2012. The "Law for Integrated Water Management", which was approved in November 2012 has transposed some provisions of the Directive of urban waste water. In the area of water quality for the management of integrated water entered into force in December. Water supply and sanitation strategy has not been adopted yet. A new treatment plant water is put into operation at Shiroka (Lake Skadar), bringing the total number of functioning plants for treating sewage to five. Three other plants are completed, but are not yet operational and two are under construction. Implementation of the acquis in the field of water quality remains at a very early stage. In the field of water, water management was transferred to the Ministry of Agriculture, Water and Rural Development and the National Secretariat of Water Council was created. Important regulations for water use, according to the law for integrated water management, were adopted. The quality of bathing waters has improved in general, however, it remains unsatisfactory in rivers. Untreated wastewater is the main source of pollution. Efforts are needed to further expand the range of the test water of NEA. In March, Velipoje treatment plant was completed, but not yet operational. The number of operational plants remain so five.

The transposition of the Drinking Water Directive is at an advanced stage, we rate 80%. While transposition of the Nitrates Directive is in its infancy, with only 4 provisions of the Directive are transposed into national legislation. The Bathing Water Directive is fully transposed by the Council of Ministers Decision No. 797 "On Approval of sanitation regulations", "Management of bathing water quality", adopted in 2010.

In the field of nature protection, full transposition of the remaining provisions of the Wild Birds Directive will be completed after accession to the EU. The legislation transposing the Wild Birds Directive are the Law for the Protection of Wildlife, the Law on Hunting, Law on Protected Areas and the Order of the Minister for approval of the list of species subject to hunting in Albania. In the field of nature protection, in January, the parliament passed a law banning hunting, but hunting continues. Effective protection for certain protected areas should still be guaranteed. Illegal activities such as hunting, fishing, logging, extraction of natural resources and construction remain common in protected areas. In February, parliament approved an amendment to the international trade in endangered species of flora and fauna. Center for Research on Flora and Fauna now must be consulted before the trading li-

cense issued. A National Agency for Protected Areas and the Albanian coast Agency were set up. Effective protection for certain protected areas still need to be guaranteed. Investments in plants must comply with the obligations of protection of nature and especially for protected areas and areas of high value natural and to be carried out in accordance with the acquis, in particular, the assessment of environmental impact, the Water Framework Directive and Birds and Habitats Directives.

Progress has been made in transposing the Habitats Directive, which is in the range 86%. Progress has occurred due to the adoption of the Law no. 68/2014, dated 03.07.2014 "On some amendments to the law", "On the protection of biodiversity" no. 9587, dated 20/07/2006 ". Transposition will end after EU accession [5].

In the field of industrial pollution control and risk management, transposition of the Industrial Emissions Directive is thought to be around 44%, where the main progress was achieved in 2011 through the adoption of several laws. Most definitions of the Directive are transposed by Law no. 10448 dated 14.07.2011 "On Environmental Permits". Regarding Chapter II, III, IV and V of this Directive, important for transposition is the Law "On Environmental Permits". In addition to the law "On Environmental Permits", another important act to transpose the provisions of this Directive that have to do with waste incineration plants and co-incineration plants to landfill is Decision no. 178 dated 06.03.2012 "For the incineration of waste" [7]. In the field of industrial pollution control and risk management, the law that is transposing the EU Directive on control of major-accident hazards (Directive 'Seveso II'), has not yet been approved. Checks effective to reduce emissions of pollutants from industrial facilities are not yet in place. Self-monitoring by industry has rarely been applied. There were no developments in the field of environmental noise. In the field of industrial pollution control and risk management, the law transposing the EU Directive "On the control of major accident hazards" is not yet approved. Preventive measures are not implemented and the preparation of risk is not applied. Self-monitoring of emissions is not reliable. In October, a working group was organized to inspect and assess the environmental compatibility of oil exploration companies. Best techniques available to guide compliance are not yet approved.

Full transposition of the acquis in the field of chemicals is planned for 2015. A framework law on chemicals management is not yet approved. A decision regulates the import of ozone-depleting gases (HCFC) over the coming years up to 2040 was revised in line with Albania's commitments under the Montreal Protocol.

Progress has been made as regards the transposition of the Environmental Noise Directive. The progress achieved in January 2013 due to the adoption of the Instruction no. 2, dated 7.01.2013 "On the indicators, evaluation methods, rules and technical requirements of the methodology for assessing noise levels, and for verification of interventions made to resolve and improve the situation". However, there are still some provisions that need to be transposed. With regard to environmental noise, a joint order of the Ministers of Transport and the Environment was adopted, which sets the rules for aircraft noise protection. He only partially transposes EU directives [6].

In the field of climate change, Albania has ratified the Vienna Convention and the Montreal Protocol, in October 1999, and is a member of the Convention of the United Nations Framework on Climate Change (UNFCCC), since January 1995. Albania has prepared two National Communications in 2002 and 2009, and has successfully finalized an appreciation for the preparation of the Third National Communication to the UNFCCC. In December 2004, the Government of Albania has ratified the Kyoto Protocol. By 2015, the Albanian Government has planned the implementation of a series of activities to address the issue of climate change. Regarding climate change, Albania associates itself with the majority of the official position of the EU in the international context [4].

It is also associated with the Copenhagen Accord, but has not yet put forward a commitment to mitigation by 2020. Albania needs to focus on the development and adoption of comprehensive climate policy and strategy in accordance with the expected policy framework for climate and energy of the EU 2030. Considerable efforts are needed to

fully integrate climate considerations in all relevant sectoral policies and strategies. No progress can be reported as regards alignment with the environment acquis. Priority should be given to the creation of monitoring, verification and reporting system for greenhouse gas emissions in accordance with the legislation of the EU Monitoring Mechanism's.

Albania has participated regularly in the work of the Accession Regional Network for Environment and Climate (ECRAN). For climate awareness at all levels remains low. Creating an inter-ministerial working group on climate change aims to improve cooperation between all stakeholders. Administrative and technical capacity of the environment sector remains limited, while the resources allocated and remain largely insufficient funding.

Priorities in the framework of harmonization with the environmental acquis [2, p. 24].

Regarding the environment, in the field of horizontal legislation, some of the main priorities relating to (i) the full alignment of national legislation with Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 "For assessment environmental consequences of certain plans and programs" and Directive no. 85/337/EEC "On the assessment of the effects caused on the environment by the activities of private and public", (ii) strengthen the implementation of environmental legislation, and (iii) ensuring properly to information and public participation in decision-making meeting obligations stemming from the Aarhus Convention.

Enactment of the Law "On air quality' and Regulations for "Air quality assessment" and criteria for several pollutants specified and complete approximation of EU legislation, are some of the main priorities in this area. Also, in order to improve the air quality, as priorities of the Ministry of Environment are also (i) drafting national plan and local plans of action to improve the air quality of the environment, (ii) strengthen the national system for monitoring the air urban and air emissions in line with European standards, (iii) strengthening cooperation with institutions of the line for the integration of air quality policies in their sectoral strategies.

Although they approved laws on waste management, as well as management plans are in Tirana, Lezha and Shkodra, improving integrated waste management continues to be one of the main priorities of the work of the Ministry of Environment. Some of the priorities in this area separation of waste at source, increasing recycling, capacity building for waste management, the assimilation complete dumpsite in landfills unsafe and assimilation complete combustion of waste, construction of landfills by EU standards, the provision of facilities for hazardous waste, medical or construction, as well as providing new investments in terms of separation and recycling of waste.

In the area of water quality, the Ministry of the Environment have its priorities: (i) improving the legal framework through the drafting and adoption of bylaws pursuant to Law no. 111/2012, (ii) an assessment of the degree of the river basin as a result of the activities of entities that use river water and taking punitive measures, (iii) the creation of a national registry of water resources, and (iv) improving management of water resources in the basin and national level through the development of a national strategy of integrated management of water resources, development of management plans of two river basins (Drin-Buna and Seman) and electronic cadastre creation of national water resources.

In the field of nature protection, is important to work to guarantee (i) the protection of protected areas, (ii) application of the rules adopted in 2011 for the establishment of areas of special protection under the Bill 2000, (iii) taking measures to prevent illegal activities such as hunting, logging and illegal buildings in protected areas, and (iv) strengthening the administrative capacity of the inspectorates to fight these phenomena.

Regarding the field of industrial pollution, the management of risks and accidents are some of the main priorities relating to (i) the full alignment of national legislation with Directive 2010/75/EU of the European Parliament and Council dated November 24, 2010, to industrial emissions (prevention and integrated control of pollution), (ii) strengthening the rule of law to minimize and monitor industrial pollution, and (iii) ensuring proper information about industrial pollution and public participation in decision making the installations with an Environmental Permit, fulfilling obligations arising from the Aarhus Convention.

In terms of sound environmental policies, one of the main priorities in this area is to strengthen the implementation of the decisions of the task force set up to noise pollution in urban centers and coastal tourist areas.

In the field of chemicals, two of the priorities of the Ministry of Environment are full alignment with EU legislation in this field and the implementation of this legislation, and the establishment of a national system of integrated management of chemicals.

Regarding climate change, alignment complete with EU legislation that the drafting of the National Strategy and National Action Plan on Climate Change, the establishment of the national system of inventories in air emissions and greenhouse gases emissions, and strengthening cooperation with institutions of the line for the integration of climate change policies in their sector strategies, are some of the priorities in this area.

In the field of forestry, the Ministry of Environmental priorities have to do with (i) the approximation of national legislation fully with the EU in this area, (ii) development of a 10-year-old New Strategy for Forests and Pastures, and (iii) the National Forest Inventory [2, p. 25].

Conclusions

Albania should make continuous efforts to speed up the pace of transposition of legislation with the EU and to implement effectively. Albania should take measures to meet environmental standards by the EU and to achieve the standards that other member countries of the EU in the environment. Lack of coordination between authorities and institutions has resulted in a chaotic situation where there is no progress because of the lack of clear responsibilities. Besides the transposition of the environmental acquis in the Albanian legislation is necessary to guaranteed the implementation of them. Also, it noted shortcomings in the absence of necessary infrastructure and staff, to engage with environmental problems. A problem encountered in Albania has to do with the lack of sufficient funds and thus it would be necessary to enhance the environmental fund, which will help in addressing environmental problems. There has been little progress in the field of environment and climate change. Further efforts are needed in all areas to strengthen the administrative capacity and to ensure the rule of law. Waste management is particularly weak and water and air quality is low. Overall, the resources remain limited and large investments are needed. Strategic planning should be established systematic. Overall, preparations in the field of environment and climate change are at an early stage.

References:

1. Raporti i Komisionit për Këshillin dhe Parlamentin Evropian për progresin e Shqipërisë në luftën kundër korrupsionit dhe krimit të organizuar dhe në reformën në drejtësi" COM (2014) 331 final, date 04.06.2014.
2. Plani Kombetar per Integrimin Evropian, Mars 2015.
3. Pacara, E. dhe Kalemaj, I., (2010), "Përpjekjet e Shqipërisë për të arritur kriteret mjedisore të BE-së dhe perceptimi publik", Instituti i Politikave Mjedisore, Tirane.
4. Comission Staff Working Document, Albania Progress Report, Brussels, 10.11.2015, SWD (2015) 213 final.
5. Comission Staff Working Document, Albania Progress Report, Brussels, October 2014.
6. Comission Staff Working Document, Albania Progress Report, Brussels, 16.10.2013 SWD (2013) 414.
7. Comission Staff Working Document, Albania Progress Report, Brussels, 10.10.2012, SWD (2012) 334.
8. Faqja zyrtare e Ministrise se Integrimit, http://www.integrimi.gov.al
9. Instrumenti per Asistencen e Para-anetaresimit (IPA II), Dokumenti Strategjik Indikativ per Shqiperine (2014–2020), miratuar me 18.08.2014.
10. Dokument Pune i Stafit te Komisionit Evropian, Progres Raporti 2014 per Shqiperine, Bruksel, me 8.10.2014, SWD (2014) 304 final proviso ire, [COM (2014) 700 final].

11. Kurs Trajnimi: "Aktoret negociues, aftesite e teknikat negociuese dhe lobizmi me BE ne kuadrin e MSA. Monitorimi i procesit te angazhimeve te marra", marre nga https://juristat.files.wordpress.com/2012/08/aktoret-negociues.pdf.
12. European Commission (1999), Commission Communication to the Council and European Parliament on the Stabilization and Association Process for Countries of South Eastern Europe, Brussels, May 26, 1999, COM (99) 235.
13. GZ L 77, 15.03.2014.

Contents